(28,419)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 464.

THE PULLMAN COMPANY, PLAINTIFF IN ERROR,

vs.

FRIEND W. RICHARDSON, AS TREASURER OF THE STATE OF CALIFORNIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 1, 1921.

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1 In the Supreme Court of the State of California.

S. F. No. —.

THE PULLMAN COMPANY (a Corporation), Plaintiff and Appellant,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant and Respondent.

TRANSCRIPT ON APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO.

Honorable Geo. A. Sturtevant, Judge.

2 In the Superior Court of the City and County of San Francisco, State of California, Dept. No. 8.

No. 40385.

THE PULLMAN COMPANY (a Corporation), Plaintiff,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant.

Amended Complaint.

Plaintiff, by leave of the court, files this, its amended complaint, and alleges that:

I.

Plaintiff is, and at all the times hereinafter mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Illinois, and engaged in the business of furnishing sleeping cars and parlor cars to railroad companies in said State of California, and in all other states of the United States of America, some of said cars running entirely within the said State of California, and some from points without the State passing through said State of California to points in other states, and some run-
3 ning from points without the state to points within said state, and from points within said state to points without said state, but none of said cars during the year ending December 31, 1910, ran from points within California to other points within California, and in the journey passed out of said state. In all said cars plaintiff transacts, and at all times herein mentioned has transacted, a sleeping car business, viz: it furnishes and at all said times has

furnished, to the passengers of said railroads, while being transported in said cars as aforesaid, berths and seats in said cars so running entirely within said state in said cars passing through, into and out of said state as aforesaid, and personal attendance and service rendered to such passengers by the agents and servants of the plaintiff in connection therewith.

II.

At all the dates and times herein named, prior to the 4th day of January, 1915, E. D. Roberts, was the Treasurer of the State of California, but on said 4th day of January, 1915, the defendant became and has ever since been, and now is the Treasurer of said state.

III.

The gross receipts of plaintiff on all its said business beginning and ending entirely within said State of California for the
4 year ending December 31, 1910, was the sum of nine hundred thirty-eight thousand, seven hundred eight--six and 80/100 dollars ($938,786.80). The proportion of the gross receipts of plaintiff for said year ending December 31, 1910, from all said business of plaintiff passing through, into or out of said state equal to the proportion that the mileage within said state bore to the total mileage over which such interstate business of plaintiff was done, was the sum of nine hundred sixty-six thousand, five hundred sixteen and 17/100 ($966,516.17) dollars.

IV.

Within the time prescribed by law and the extensions thereof duly made and entered upon the minutes of the State Board of Equalization of said state, to wit: on the 30th day of April, 1911, plaintiff filed a report signed and sworn to by one of plaintiff's officers, namely: plaintiff's secretary, upon a form prescribed by said State Board of Equalization, and showing, for the year ending said 31st day of December, 1910, in such detail and in manner and form as prescribed by said State Board of Equalization, the various items of information required to be shown by section 9 of an act entitled "An act to carry into effect the provisions of section 14 of article XIII of the Constitution of the State of California,
5 as said Constitution was amended November 8, 1910, providing for the separation of state from local taxation, and providing for the taxation of public service and other corporations, banks and insurance companies for the benefit of the state, all relating to revenue and taxation," approved April 1, 1911. In addition to the items so required to be shown, said report contained the following statement:

"This company is engaged in the business of furnishing sleeping cars and parlor cars to railroad companies, some of which cars run into the State of California and some run from other states into

California and out of California into other states, and some of such cars pass through the State of California, and in all such cars this company transacts a sleeping car business and furnishes to the passengers of the railroads berths and seats in its cars in the State of California, and from other states into the State of California and from California to other states and in and on cars that pass through the State of California. That under said Item 19 there is stated the gross receipts from such classes of business as said State Board of Equalization has designated in its blank report to be reported separately and that each item of gross receipts so shown in this report contains and includes that proportion of the gross receipts
6 from the business passing through, into and out of the State of California, as above stated, which the mileage within that state bears to the total mileage over which such interstate business was done, as required by section 2 and by paragraph 8 of section 9, of chapter 335 of the statutes of California for 1911, approved April 1, 1911.

"The Pullman Company protests that no portion of its receipts from its business done in its cars from other states into California, or from California into other states, or from other states passing through California to points beyond California, is taxable in or by the State of California, and that no portion thereof may lawfully be taxed in or by the State of California, and that any tax levied by the State of California, upon its interstate business, as above stated, or upon the revenue therefrom will constitute a burden upon interstate commerce and will violate the provisions of article I, section 8 of the Constitution of the United States.

"NOTE.—The proportion of gross receipts on business passing through, into or out of the State of California, as above stated, is more than one-half of the total gross receipts shown under item 19 of said report in the column headed 'In California by above rule.'"

On or about the 11th day of May, 1911, plaintiff at the request and by the direction of said board and in the manner and
7 form prescribed by said board, filed with said board a supplemental report showing in detail certain other and further information required by said board, but which plaintiff had not previously known or understood was required by said board to be furnished, and that on the 22nd day of June, 1911, plaintiff, also at the request and by the direction of said board and in the manner and form prescribed by said board, filed with said board a certain other supplemental report showing the operative property of the plaintiff located within said State of California, to wit: operative property located in the County of Contra Costa, within said state, and that said last named supplemental report was in fact a duplicate of the report made by the plaintiff to the assessor of said Contra Costa County of the operative property of the plaintiff located therein, not included in plaintiff's said report made and filed with said State Board of Equalization as aforesaid.

V.

At some time between the first day of April, 1911, and the third Monday before the first Monday in July, 1911, the exact time being to plaintiff unknown, said board assessed and levied a tax of three (3) per cent upon the gross receipts of plaintiff for the year
8 ending December 31, 1910, on all business of plaintiff beginning and ending entirely within said state, and that proportion of the gross receipts from all plaintiff's business passing through, into or out of said state that the mileage within said state bore to the total mileage over which such interstate business was done, to wit: upon the sum of one million, nine hundred five thousand, three hundred two and 97/100 ($1,905,302.97) dollars, which said tax amounted to the sum of fifty-seven thousand, one hundred fifty-nine and 8/100 ($57,159.08) dollars. Said tax was assessed to the plaintiff.

VI.

Thereafter, and in the month of July, 1911, the Controller of State of said State of California, by a notice partly written and partly printed, dated July 1, 1911, notified plaintiff of the levy of said tax for the year 1911, amounting to said sum of fifty-seven thousand, one hundred fifty-nine and 8/100 ($57,159.08) dollars, and that the same was due and payable July 3, 1911, and therein and thereby further notified the plaintiff of the times when said tax would become delinquent and the penalties to be added thereto if not paid, and further notified the plaintiff that failure to pay said tax as in said notice set forth would work forfeiture of plain-
9 tiff's right to do business in the State of California. Said notice was received by the plaintiff at its office in Chicago, Illinois, in due course of United States mail on or about the 25th day of July, 1911.

VII.

On or about the 5th day of July, 1911, said Controller of State began the publication of a notice, which said notice appeared thereafter in three daily newspapers, one published in the City of Sacramento, one in the City and County of San Francisco, and one in the City of Los Angeles, all in said State of California. Said notice specified, first, that said Controller had received from said board the record of assessments for state taxes; second, that the taxes therein assessed were due and payable on the first Monday of July, 1911, and that one-half thereof would be delinquent on the sixth Monday after said first Monday in July, 1911, at six o'clock P. M., and that unless paid to the State Treasurer at said City of Sacramento prior thereto, fifteen (15) per cent would be added to the amount thereof, and unless paid prior to the first Monday of February, 1912, at six o'clock P. M., an additional five (5) per cent would be added to the amount thereof, and that the remaining

one-half of said taxes would become delinquent on the first
10 Monday in February, 1912, at six o'clock P. M., and if not paid to the State Treasurer at said City of Sacramento prior thereto, five (5%) per cent would be added to the amount thereof.

VIII.

On the 9th day of August, 1911, at said City of Sacramento, plaintiff served upon and delivered to said Controller a written notice and demand theretofore executed by plaintiff, which said notice and demand was in the words and figures following:

"To the State Controller of the State of California:

You will please take notice that the Pullman Company, a corporation of the State of Illinois, duly reported to the State Board of Equalization of the said State of California in accordance with the provisions of section 9 of chapter 335 of the Laws of 1911, approved April 1, 1911, and as required by said State Board of Equalization, and that said report contained, among other things, the gross receipts of said company from operation within the State of California, as such gross receipts from operation within the state are defined in section 7 of said act with respect to companies operating partly within and partly without the state, for the year ending the 31st day of December last preceding, to wit: for the year
11 ending 31st day of December, 1910, from such classes of business as the State Board of Equalization designated to be reported separately, amounting in whole to the sum of $1,905,-302.97. That $938,786.80 of such gross receipts so reported was gross receipts from all its business during said year, beginning and ending entirely within the State of California, and that $966,516.17 of said gross receipts so reported was that proportion of the gross receipts from all the business of said company passing through, into or out of the State of California, defined in said section 7 and in paragraph 8 of section 9 of said act.

"That said The Pullman Company has received from you, the said controller, your official notice number 32280 stating that the taxes levied upon said company for the year 1911, amount to $57,-159.08, the same being three per cent, upon said sum of $1,905,-302.97; that said The Pullman Company is ready and willing and hereby offers to pay to the State Treasurer of said state, upon the order of you, the said controller, a portion thereof, to wit: $28,-163.61, being three per centum upon said sum of $938,786.80 gross receipts of said company on all business beginning and ending entirely within the State of California, and hereby demands that you, the said controller, make and issue the proper order as pro-
12 vided in said section 22 for the payment of said amount, $28,163.61 to said State Treasurer, and said The Pullman Company is advised and believes and so notifies you, said State Controller, that any and all said taxes or any taxes levied and assessed which are based and computed upon gross receipts or any part thereof from business passing through, into or out of the State of

California, are a burden upon interstate commerce and a regulation of commerce among the several states contrary to the provisions of section 8 of article 1, of the Constitution of the United States, and are illegal and void, and also that said taxes levied, assessed, based or computed upon such gross receipts from interstate business, or any part thereof, are void because they are assessed upon the income of property and business situated beyond the State of California, and to tax the same is to take property without due process of law in violation of section 1 of article 14, of the amendments of the Constitution of the United States.

Dated this 9th day of August, 1911.

THE PULLMAN COMPANY,
By T. C. COOGAN,
Its Attorney."

Said controller then and there accepted said written notice and demand and filed the same in his office, and then and there
13 refused to make said order demanded by plaintiff as aforesaid, and has never made the same.

IX.

On the tenth day of August, 1911, at said City of Sacramento, plaintiff tendered to said E. D. Roberts, as Treasurer of said State of California, said sum of twenty-eight thousand, one hundred sixty-three and 61/100 ($28,163.61) dollars, in gold coin of the United States of America, as a tax upon plaintiff's business for said year ending December 31, 1910, and, at the same time and place, plaintiff served upon and delivered to said E. D. Roberts, as said Treasurer, a written notice and tender theretofore executed by plaintiff, to which said notice and tender was attached a copy of said notice and demand delivered to said Controller on the ninth day of August 1911, as aforesaid, and said copy was therein designated as "Exhibit A." Said notice and tender was in the words and figures following:

"To the State Treasurer of the State of California:

"You will please take notice that The Pullman Company, the corporation named in and which signed the notice a copy of which is hereto attached marked 'Exhibit A,' on the 9th day of August, 1911, served the original of said notice upon the State Controller of
14 said State of California and that said State Controller wholly failed, neglected and refused to make and to issue his proper order or any order for the payment to you, said State Treasurer, of the amount of taxes which said The Pullman Company in said notice stated it was ready and willing to pay and offered to pay, and said The Pullman Company now and herewith tenders to you, as such State Treasurer, the sum of $28,163.61, taxes for the year 1911, being three per centum upon the sum of $938,786.80, which is the gross receipts from operation, to wit: all receipts on business of said company beginning and ending entirely within the State of California during the year ending December 31, 1910, defined in section 7,

and paragraph 8 of section 9 of chapter 335 of the Laws of California of 1911, approved April 1, 1911, and as set forth in the attached copy of notice to the Controller, marked 'Exhibit A,' which is hereby referred to and made a part of this payment.

Dated this 10th day of August, 1911.

THE PULLMAN COMPANY,
By T. C. COOGAN,
Its Attorney."

Said E. D. Roberts, as said Treasurer, then and there accepted said written notice and tender and filed the same in his office, and
15 then and there refused to accept said sum tendered as aforesaid, or any sum less than fifty-seven thousand, one hundred fifty-nine and 8/100 ($57,159.08) dollars.

X.

Thereafter, and on said 10th day of August, 1911, plaintiff served upon and delivered to said Controller a written protest theretofore executed by plaintiff, to which said protest was attached a copy of said notice and demand delivered to said Controller on the 9th day of August, 1911, which said notice and demand was therein designated as "Exhibit A," and a copy of said notice and tender delivered to said E. D. Roberts, as said Treasurer, on the 10th day of August, 1911, which said notice and tender was therein designated as "Exhibit B." Said protest was in the words and figures following:

"To the State Controller of the State of California:

"The Pullman Company, a corporation of the State of Illinois, named in and which signed the original notice to you, said Controller, of which the attached paper, marked Exhibit 'A,' and made a part hereof, is a true and correct copy, and the original notice and offer and tender of payment made to the Treasurer of said state, of which the attached paper, marked 'Exhibit B,' and made a part hereof, is a true and correct copy hereby notifies you, said
16 Controller, that its tender and offer of payment of the sum of $28,163.61 specified in said exhibits 'A' and 'B,' has been refused by said State Treasurer and that said company is on this 10th day of August, 1911, about to make payment to the said State Treasurer of the sum of $57,159.08, the amount stated in your official notice No. 32280 and claimed to be due from said The Pullman Company as taxes for the year 1911, and now, at the time of payment of such taxes claimed to be due, said company makes and files with you this, its written protest, and hereby states that said company claims a part of the assessment on which said taxes are levied and computed to be void, to wit: on so much of the gross receipts from the business of said company as are from business passing through, into or out of the State of California, amounting to $966,516.17, on which the tax claimed amounts to twenty-eight thousand, nine hundred ninety-five dollars and forty-eight cents, and that the grounds upon which such claim is founded are that the receipts from such business pass-

ing through, into or out of the State of California are gross receipts and earnings from interstate business and that any and all taxes levied, assessed, based or computed upon such gross receipts from interstate business or any part thereof are a burden upon interstate commerce and a regulation of such commerce, to wit: com-
17 merce among the several states, contrary to the provisions of section 8 of article 1, of the Constitution of the United States, and that all such portion of said taxes as are levied, assessed, based or computed upon said gross receipts from business passing through, into or out of said State of California are illegal and void.

And as a further ground of protest states that said taxes levied and assessed, based or computed upon such gross receipts from interstate business or any part thereof, are void, for the reason that they are assessed upon the income of property and business situated beyond the State of California, and to tax the same is to take property without due process of law, in violation of section 1 of article 14 of the amendments to the Constitution of the United States.

Dated this 10th day of August, 1911.

THE PULLMAN COMPANY,
By T. C. COOGAN,
Its Attorney."

Said Controller then and there accepted said protest and filed the same in his office.

XI.

Thereafter, and on said 10th day of August, 1911, at said City of Sacramento, plaintiff paid to said E. D. Roberts, as Treasurer
18 of said State of California, said sum of fifty-seven thousand one hundred fifty-nine and 8/100 ($57,159.08) dollars under the protest filed with said State Controller as aforesaid, and then and there notified said E. D. Roberts, as said Treasurer, that plaintiff paid said sum under said protest so filed.

XII.

Said sum of nine hundred sixty-six thousand, five hundred sixteen and 17/100 ($966,516.17) dollars, and the whole thereof, was received by the plaintiff for the use of berths and seats in its cars employed in transporting passengers in interstate commerce, used and occupied by persons while being transported in said cars from points without the State of California passing through said state to points in other states from points in the State of California to points in other states, and from points in other states to points within the State of California, and that said berths and seats so used were used partly in California and partly in other states in journeys in plaintiff's said cars from one state to another, and that no part thereof was for such use entirely within the State of California or for journeys commencing at a point in the State of California and end-

ing at another point in the State of California, but passing
19 out of said state in the said journey, and that no part thereof was for use entirely in other states than California, but that said sum and the whole thereof, was receipts of the plaintiff from business conducted by it partly in one state and partly in another state or other states and carried from one state into another state or states, and that said business and the whole thereof in which said receipts were made and earned was commerce among the several states.

XIII.

Said sum of nine hundred and sixty-six thousand, five hundred and sixteen and 17/100 dollars and the whole thereof was received by the plaintiff for the use of its property and employed in interstate commerce as aforesaid, and was income from the business conducted as aforesaid by plaintiff, to wit: the furnishing of berths and seats to persons who were transported in its said cars principally and for the most part while said cars were without and beyond said State of California and was income from movable property, to wit cars and seats and berths therein, all of which said property was principally and for the most part situated without and beyond the limits of said State of California when in the use and service for which said income was made and earned by the plaintiff and
20 its said property, and that said property was not, nor was any part thereof, situated in the State of California, and was not in said State of California except while said cars were making trips upon railroads from one state to another, in the transportation of passengers, partly into, out of or through said State of California in commerce among the several states.

XIV.

Said tax amounting to twenty-eight thousand, nine hundred ninety-five and 48/100 ($28,995.48) dollars and the whole thereof so levied, charged and collected from the plaintiff upon the assessment so, as aforesaid, made by said State Board of Equalization upon said sum of nine hundred and sixty-six thousand, five hundred sixteen and 17/100 ($966,516.17) dollars and upon any part, portion or proportion of the gross receipts from plaintiff's said business or any business passing through, into or out of said State of California, and passing from one state to another state, was and is a tax on the earnings of the plaintiff in its business conducted from one state to another state or states and was and is a tax on commerce among the several states, and a burden on such commerce, and was and is a tax on the income of property and business of the plaintiff situated without and beyond the State of California, and the enforce-
21 ment of said tax against the plaintiff and said payment thereof required by the said E. D. Roberts, as said Treasurer, as provided by said statute of California and as hereinbefore set forth did in fact take from the plaintiff its property and deprive the plain-

tiff of its property, to wit: said sum of twenty-eight thousand, nine hundred ninety-five and 48/100 ($28,995.48) dollars for a tax levied under and by virtue of the laws of California upon the income of the property and business of the plaintiff situated without and beyond said State of California; that plaintiff's right to continue to do business in said State of California was and is made dependent on the payment of said tax on or before a date fixed by said statute.

XV.

After plaintiff paid to the said E. D. Roberts, as said Treasurer, as aforesaid, said sum of fifty-seven thousand, one hundred fifty-nine and 8/100 ($57,159.08) dollars, to wit: on said 10th day of August, 1911, at said City of Sacramento, plaintiff demanded of the said E. D. Roberts, as said Treasurer, that said sum of twenty-eight thousand nine hundred and ninety-five and 47/100 ($28,995.47) dollars paid under protect as aforesaid, be returned and repaid to plaintiff, but said E. D. Roberts, as said Treasurer, then and there
22 refus*al* and neglected, and has ever since refused and neglected to return or repay to plaintiff said sum or any part thereof. On the 4th day of January, 1916, at said City of Sacramento, plaintiff demanded of defendant that said sum of twenty-eight thousand nine hundred and ninety-five and 47/100 ($28,995.47) dollars paid under protest as aforesaid be returned and repaid to plaintiff, but defendant then and there refused and neglected and has ever since refused and neglected to return or to repay to plaintiff said sum or any part thereof. Neither said sum nor any part thereof, has been returned or repaid to plaintiff.

Wherefore, plaintiff prays judgment against defendant, as said Treasurer, for the sum of twenty-eight thousand, nine hundred and ninety-five and 47/100 ($28,995.47) dollars, with interest thereof from the 10th day of August, 1911, and its costs herein expended.

T. C. COOGAN,
BURKE CORBET,
Attorneys for Plaintiff.
G. S. FERNALD,
F. B. KELLOGG,
Of Counsel.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Frank L. Wood, being duly sworn, deposes and says:

23 That he is an officer, to wit: Superintendent in and for the State of California, of the plaintiff in the above entitled action; that he has read the foregoing amended complaint and knows the contents thereof and that the same is true of his own knowledge except as to the matters which are therein stated on information or belief, and as to those matters, that he believes it to be true.

FRANK L. WOOD.

Subscribed and sworn to before me, this 7th day of February, 1916.

[SEAL.] CHARLES R. HOLTON,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires Sept. 16, 1918.

(Endorsed:) Service of the within amended complaint is hereby admitted this 9th day of February, 1916.

U. S. WEBB,
RAYMOND BENJAMIN,
Attorneys for Defendant.

Filed Feb. 9, 1916.
H. I. MULCREVY,
Clerk,
By H. BRUNNER,
Deputy Clerk.

24 [Title of Court and Cause.]

Answer to Amended Complaint.

Now comes the above named defendant and answering plaintiff's complaint herein alleges and denies as follows:

I.

Answering paragraph III of said complaint defendant denies that the proportion of the gross receipts of plaintiff for said year ending December 31, 1910, from all said business of plaintiff passing through, into, or out of said state equal to the proportion that the mileage within said state bore to the total mileage over which such interstate business of plaintiff was done, was the sum of nine hundred and sixtysix thousand, five hundred sixteen and 17/100 ($966,516.17) dollars, and in this behalf alleges that the proportion of the gross receipts of plaintiff for said year ending December 31, 1910, from all said business of plaintiff passing through into or out of said state equal to the proportion that the mileage within said state bore to that portion of the total mileage over which such interstate business of plaintiff was done based upon the mileage between the State of California and the City of Chicago, State of Illinois, was the sum of nine hundred sixty-six thousand, five hundred sixteen and
25 17/100 ($966,516.17) dollars, and in this behalf defendant further avers that in reporting such proportion of gross receipts from interstate earnings, the plaintiff at no time reported to the State of California any part or portion of such interstate earnings that comprehended earnings of plaintiff east of Chicago points, though such earnings were in part attributable to business destined to or from the State of California.

II.

Answering paragraph V defendant denies that said board at any time assessed and levied, or assesed or levied, a tax of three or any other per cent upon the gross receipts of plaintiff for the year ending December 31, 1910, on all or any business of plaintiff beginning and ending entirely within said state, or upon that or any proportion of the gross receipts thereof, or any of plaintiff's business passing through, into or out of said state that the mileage within said state bore to the total or any portion of the mileage over which such interstate business was done, or upon any part or portion of said gross receipts, or at all, and denies that said board levied and assessed, or levied or assessed a tax of three or any other per cent upon the sum of one million, nine hundred and five thousand, three hun-
26 dred and two and 97/100 ($1,905,302.97) dollars of plaintiff's receipts, or upon any other sum of money comprising plaintiff's receipts; admits that the tax levied upon plaintiff's property, assessed as hereinafter alleged, amounted to the sum of fifty-seven thousand, one hundred fifty-nine and 8/100 ($57,159.08) dollars, and that said tax was assessed to the plaintiff.

III.

Answering paragraph XIV, defendant denies that said or any tax, or any part of any tax, levied, charged and collected, or levied or charged or collected, upon the or any assessment made by said State Board of Equalization was and is or was or is, a tax on the or any earnings of the plaintiff in its business conducted from one state to another state or states, or was and is, or was or is a tax on commerce among the several states, or a burden on such commerce; or was and is, or was or is a tax on the or any income of property and business, or property or business of the plaintiff situated without or beyond the State of California; and denies that the enforcement of said or any tax against plaintiff and the payment of said or any tax required by said E. D. Roberts, as State Treasurer, did in fact or otherwise take from plaintiff its or any property, or deprive plaintiff of its or
27 any property in any sum of money whatsoever, for a tax levied under or by virtue of any law whatsoever upon the income of the or any property or business of plaintiff situated without and beyond, or without or beyond said State of California; denies that plaintiff's right to continue to do business in said State of California was and is, or was or is made dependent on the payment of said or any tax on or before any date fixed by statute.

By way of special answer and defense, defendant alleges that the State Board of Equalization of the State of California, between the 1st day of April, 1911, and the third Monday before the first Monday of July, 1911, did levy a tax for state revenue upon the franchise, cars and other rolling stock, and all other property, tangible and intangible, real, personal and mixed, of plaintiff and all and every part thereof, and none other, used exclusively in the operation of plaintiff's business in said state; that said property and the whole thereof

was then and at all times had been employed by plaintiff as a whole in a going business, and was then and at all times had been engaged and used as a unit by plaintiff in such business in the State of California; that in its business in the State of California plaintiff then had and at all times possessed and enjoyed a monopoly of and in such business to the exclusion of all other persons and corpo-
28 rations; that the value of said property and the whole thereof as a unit for purposes of taxation was in January, 1911, ascertained and determined by the Legislature of the State of California to be of that value which by levying thereon the rate of taxation levied upon other property and against other persons similarly situated would result in a tax upon the value of said property so employed in said business equal in amount to three per cent of that part of the gross receipts of plaintiff for the year ending December 31, 1910, earned in its said business performed entirely within the State of California and attributable upon a proportionate mileage basis to its said business done entirely within the State of California, as said gross receipts from operation of such business are defined by section 14 of article XIII of the Constitution of the State of California; that the tax levied upon said property of plaintiff and the whole thereof, in accordance with and based upon the value of the same as found and taxed by the Legislature of the State of California, was and is the sum of fifty seven thousand, one hundred fifty-nine and 8/100 ($57,159.08) dollars; that the gross receipts of plaintiff which were reported to and considered by and to which said State Board of Equalization resorted to ascertain and determine the tax that
29 plaintiff should pay upon its said property in accordance with the value, ascertained and determined as a unit as hereinbefore alleged, were and all of them were receipts for the year ending December 31, 1910, arising solely from the business done by plaintiff entirely within the State of California, and that proportion of its interstate earnings arising from its business and attributable to the State of California upon a mileage basis, as said gross receipts from operation are defined by section 14 article XIII of the Constitution of the State of California, and none other; that all of said receipts were earned by plaintiff by and with and through the operation of said property of plaintiff in its business so valued and situated, and so used and engaged as a unit in the said business of plaintiff within the State of California, and included within said assessment of plaintiff's property, and no part of said assessment or of said tax is or was against or upon, or based upon plaintiff's earnings, as earnings arising from its business conducted either in this or any other state, or between this and any other state, or between other states passing through this state, and no part of said assessment or of said tax was or is an assessment or a tax upon plaintiff's income as income arising from said or any of said property, or any other property, or
30 from said or any other business of plaintiff situated within or without this state.

Wherefore defendant prays that plaintiff take nothing by its action, and defendant recover judgment for his costs.

U. S. WEBB,
Attorney General of the State of California;
RAYMOND BENJAMIN,
Chief Deputy Attorney General,
Attorneys for Defendant.

(Endorsed:) Due service of the within answer to amended complaint admitted this 17th day of March, 1916.

T. C. COOGAN AND
BURKE CORBET,
G. S. FERNALD AND
F. B. KELLOGG,
Of Counsel,
Attorneys for Plaintiff.

Filed Mar. 18, 1916.
H. I. MULCREVY,
Clerk,
By H. BRUNNER,
Deputy Clerk.

[Title of Court and Cause.]

Findings of Fact and Conclusions of Law.

The above entitled action having been duly tried without a
31 jury and submitted to the court for its decision on the nineteenth day of March, 1917; and the court having duly considered said matter does now find the following as the facts in said case:

I.

That the allegations contained in paragraphs I, II, III, IV, VI, VII, VIII, IX, X, XI, XII, XIII and XV of plaintiff's amended complaint are true.

II.

That the allegations contained in paragraphs V and XIV of plaintiff's amended complaint are not true.

III.

That between the first day of April, 1911, and the third Monday before the first Monday of July, 1911, the State Board of Equalization of the State of California did levy a tax for state revenue upon the franchise, cars and other rolling stock, and all other property, tangible and intangible, real, personal and mixed, of plaintiff and all and every part thereof, and none other, used exclusively in the operation of plaintiff's business in said state; that said property

and the whole thereof was then and at all times had been employed by plaintiff as a whole in a going business, and was then and
32 at all times had been engaged and used as a unit by plaintiff in such business in the State of California; that in its business in the State of California plaintiff then had and at all times possessed and enjoyed a monopoly of and in such business to the exclusion of all other persons and corporations; that the value of said property and the whole thereof as a unit for purposes of taxation was in January, 1911, ascertained and determined by the legislature of the State of California to be of that value which by levying thereon the rate of taxation levied upon other property and against other persons similarly situated would result in a tax upon the value of said property so employed in said business equal in amount to three per cent of that part of the gross receipts of plaintiff for the year ending December 31, 1910, earned in its said business performed entirely within the State of California and attributable upon a proportionate mileage basis to its said business done entirely within the State of California, as said gross receipts from operation of such business are defined by section 14 of article XIII of the Constitution of the State of California; that the tax levied upon said property of plaintiff and the whole thereof, in accordance with and based upon the value of the same as found and taxed by the legislature of the
33 State of California, was and is the sum of fifty-seven thousand one hundred fifty-nine and 8/100 dollars ($57,159.08); that the gross receipts of plaintiff which were reported to and considered by and to which said State Board of Equalization resorted to ascertain and determine the tax that plaintiff should pay upon its said property in accordance with its value, ascertained and determined as a unit, were and all of them were receipts for the year ending December 31, 1910, arising solely from the business done by plaintiff entirely within the State of California, and that proportion of its interstate earnings arising from its business and attributable to the State of California upon a mileage basis, as said gross receipts from operation are defined by section 14 article XIII of the Constitution of the State of California, and none other; that all of said receipts were earned by plaintiff by and with and through the operation of said property of plaintiff in its business so valued and situated, and so used and engaged as a unit in the said business of plaintiff within the State of California, and included within said assessment of plaintiff's property, and no part of said assessment or of said tax is or was against or upon, or based upon plaintiff's earnings, as earnings arising from its business conducted either in this or any other
34 state, or between this and any other state, or between other states passing through this state, and no part of said assessment or of said tax was or is an assessment or a tax upon plaintiff's income as income arising from said or any of said property, or any other property, or from said or any other business of plaintiff situated within or without this state.

Conclusions of Law.

From the foregoing facts the court concludes:
That plaintiff is not entitled to the relief demanded in its amended complaint and that defendant should have judgment for his costs.

Dated: Oct. 18, 1918.

GEO. A. STURTEVANT,
Judge of the Superior Court.

(Endorsed:) Filed Oct. 18, 1918. H. I. Mulcrevy, Clerk, by W. S. Shafer, Deputy Clerk.

[Title of Court and Cause.]

Judgment.

The above entitled action having duly come on for trial, the parties represented by their respective counsel, and oral and documentary evidence having been offered in behalf of the
35 plaintiff, and the cause thereupon argued and submitted to the court, and the court having duly considered the same and having made and entered findings of fact and conclusions of law herein:

It is ordered that judgment be and the same is hereby given for the defendant, and that defendant have further judgment for his costs.

Done in open court this 2nd day of December, 1918.

GEO. A. STURTEVANT,
Judge.

(Endorsed:) Filed Dec. 2, 1918. H. I. Mulcrevy, Clerk, by H. Brunner, Deputy Clerk. Recorded Dec. 2, 1918, 4:15 o'clock P. M., volume 124, page 191. H. I. Mulcrevy, Clerk, by J. H. S. Jones, Deputy Clerk.

[Title of Court and Cause.]

Clerk's Certificate to Judgment Roll.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, H. I. Mulcrevy, county clerk of the City and County of
36 San Francisco, State of California, and ex-officio clerk of the Superior Court, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled cause, and recorded in judgment book 124 of said court, at page 191. And I further certify that the foregoing papers hereto annexed constitute the judgment roll in said cause.

Witness my hand and seal of said Superior Court this 3rd day of Dec., A. D. 1918.

[SEAL.]

H. I. MULCREVY,
Clerk,
By S. A. BLUM,
Deputy Clerk.

(Endorsed:) Filed Dec. 3, 1918. H. I. Mulcrevy, Clerk, by S. A. Blum, Deputy Clerk. Recorded judgment book 124, page 191.

[Title of Court and Cause.]

Notice of Intention to Move for a New Trial

To Friend W. Richardson, as Treasurer of the State of California, defendant in the above entitled action, and to Hon. U. S. Webb, Attorney General of the State of California, and Raymond Benjamin, Esq., Chief Deputy Attorney General, attorneys for said defendant:

You and each of you will please take notice that the above
37 named plaintiff, The Pullman Company, intends to move the above entitled court to vacate and set aside the decision and judgment of the court rendered and entered in the above entitled cause, and to grant a new trial of said cause, upon the following grounds, to wit:

1. Insufficiency of the evidence to justify the decision.

2. That the decision is against law.

3. Errors in law occurring at the trial and excepted to by this plaintiff.

Said motion will be made on the minutes of the court in said cause.

Dated December 10th, 1918.

T. C. COOGAN AND
CORBETT & SELBY,
Attorneys for Plaintiff, The Pullman Company.

(Endorsed:)

Service of the within and foregoing notice admitted by copy, this 10th day of December, A. D. 1918.

U. S. WEBB,
Attorney General of the State of California, and
RAYMOND BENJAMIN,
Chief Deputy Attorney General,
Attorneys for Defendant.

Filed Dec. 11, 1918.
H. I. MULCREVY, *Clerk,*
By J. J. RAFFERTY, *Deputy Clerk.*

38 [Title of Court and Cause.]

Minute Order Denying Plaintiff's Motion for a New Trial.

Friday, January 10, 1919.

Present: Honorable Geo. A. Sturtevant, judge, and officers of the court.

In this action plaintiff's motion for a new trial herein coming on regularly this day for hearing. Counsel for the respective parties present and consenting thereto that said plaintiff's motion be submitted to the court for consideration and decision without argument. The court being full- advised in the premises, It is ordered that said plaintiff's motion be and the same is hereby denied.

[Entered in minutes of department No. 8, volume 129, page 137.]

39 [Title of Court and Cause.]

Notice of Appeal and Stipulation Waiving Undertaking on Appeal.

To Hon. U. S. Webb, Attorney General of the State of California, and Raymond Benjamin, Esq., Chief Deputy Attorney General, attorneys for Friend W. Richardson, as Treasurer of the State of California, Defendant, and H. I. Mulcrevy, Esq., Clerk of the Superior Court in and for the City and County of San Francisco, State of California:

Please take notice that the plaintiff above named, The Pullman Company, does hereby appeal from the judgment and the whole thereof, rendered in open court on December 2nd, 1918, in the above entitled action, "that judgment be and the same is hereby given for the defendant, and that defendant have further judgment for his costs," which said judgment was on December 3rd, 1918, recorded in the office of said clerk aforesaid in volume 124 of judgment records at page 191.

T. C. COOGAN AND
CORBET & SELBY,
Attorneys for the Plaintiff, The Pullman Company.

40 Due and personal service of the foregoing notice of appeal admitted upon us this 31st day of January, A. D. 1919.

U. S. WEBB,
Attorney General of the State of California,
RAYMOND BENJAMIN,
Attorneys for Friend W. Richardson, as Treasurer of the State of California, Defendant.

And now, January 31, A. D. 1919, the undertaking on appeal in the foregoing cause, required by law to be given by The Pullman

Company, plaintiff and appellant, in order to perfect said appeal, be and the same is by the defendant hereby waived.

U. S. WEBB,
Attorney General of the State of California;
RAYMOND BENJAMIN,
Attorneys for Friend W. Richardson,
As Treasurer of the State of California.

(Endorsed:) Filed Feb. 3, 1919. H. I. Mulcrevy, Clerk, by H. Brunner, Deputy Clerk.

41 [Title of Court and Cause.]

Bill of Exceptions to be Used on Appeal from Judgment.

Be it remembered, that the trial of this cause commenced in department No. 8, Honorable George A. Sturtevant presiding, on the 19th day of March, 1917, and fully heard on said day, and submitted, Messrs. T. C. Coogan and Corbet & Selby appearing as attorneys for plaintiff, The Pullman Company, a corporation, and Honorable U. S. Webb, Attorney General of the State of California, and Raymond Benjamin, Chief Deputy Attorney General, appearing as attorneys for said defendant; the cause was tried before the court sitting without a jury, and thereupon the following proceedings were had and taken:

FREDERICK L. SIMMONS, being called as a witness for plaintiff, and being sworn, testified as follows:

"I live in Chicago, State of Illinois, and am the assistant general auditor of the plaintiff, The Pullman Company. I have been such assistant general auditor for about five years, and prior to that time for fifteen years I was auditor of receipts for the same company, and for three years prior to that time I was traveling auditor, and for the three years prior to that I was assistant property
42 clerk, all for the same company. During the year 1911 there was prepared by The Pullman Company under my direction and supervision a statement of the receipts of the fares of passengers from its business based upon gross receipts for the year 1910 and ending December 31st, 1910, for use and reference to the State Board of Equalization of the State of California.

California's proportion of the interstate earnings for the year ending December 31st, 1910, was $966,516.17. That is made up of fares received for the use of seats and berths in pullman cars from passengers whose trips originated at points within the State of California and terminated at points outside of the State of California, or whose trips originated at points without the State of California and terminated at points within the State of California, or whose trips originated outside the State of California and passed through and terminated at other points beyond the State of California."

On cross-examination he testified further:

"During the fifteen years that I was auditor of receipts, I had charge of tax matters and carried the supervision of these tax matters into my new position. I used California mileage as a divisor as compared with the total mileage covered by each fare. If
43 the transaction was the sale of a berth from San Francisco to Reno, Nevada, that particular earning was divided upon the mileage basis giving to California the proportion of the total trip that the mileage from San Francisco to the state line bore to the mileage from the state line to the City of Reno. That was the method pursued with respect to each and every through trip. If the person purchased transportation from San Francisco to New York City, we divided it according to the mileage between San Francisco and New York City. We have only one through line running from San Francisco to points east of Chicago and that is the line operated between San Francisco and Washington via New Orleans, and in that particular case the passenger would travel right through in one car on a pullman ticket, one contract. That fare would be prorated according to the mileage, giving California its mileage proportion based upon the mileage covered by the fare between San Francisco and Washington. In other cases, however, where we have no through or continuous line of sleeping cars operating between San Francisco and New York, we might, on some occasions, sell through coupon tickets reading from San Francisco to New York, splitting perhaps at St. Paul, Minnesota, Kansas City, New
44 Orleans or St. Louis. In such cases the earnings would be pro-rated on the mileage in California as compared to the through mileage between San Francisco and New York, so as to give California its mileage proportion of its through fare. This has been done in every instance where there was a through passenger train between New York and San Francisco."

Q. I buy a ticket from San Francisco to New York and apply to your company at San Francisco for a pullman ticket for an upper berth. How far will you sell me that ticket from San Francisco without change of cars?

A. From San Francisco to Chicago or St. Louis or New Orleans.

Q. Now, then, what do I do? What am I compelled to do by the rules of your company when I arrive, for instance, at Chicago?

A. That would, of course, depend on how long you wished to remain at Chicago and what route you wished to travel over.

Q. I want to go out the same night. I get in at nine o'clock in the morning and want to go out at two o'clock in the afternoon.

A. Then you would apply to another ticket office and buy another pullman ticket, a separate ticket, separate contract, which would be honored in another car over another road and on a separate contract, from Chicago to New York. You would not be identified as
45 the passenger whose trip originated in San Francisco nor could it be determined in any way that you came from San Francisco.

Q. The sum and substance of it is, Mr. Simmons, that The Pullman Company does not apportion to the State of California any portion of the money which you derive from the sale of a berth from Chicago to New York under the circumstances of that kind of a trip, do you?

A. No, sir, we do not.

Q. When do you report to the State of California any portion of the receipts of your company when the situation is reversed and the inception of the trip is New York and its destination is San Francisco? Don't you report any portion of those receipts from New York to Chicago for the trip passing through Chicago?

A. We would on a through coupon ticket reading from New York to San Francisco.

Q. Are you speaking of a tourist ticket?

A. Either standard or tourist.

Q. Either standard or tourist?

A. We quite frequently sell through coupon tickets reading from New York or Boston or Washington.

Q. On the basis of one hundred tickets sold, what is the percentage of the through coupon ticket?

46 A. I could not say.

Q. It is very negligible, is is not, Mr. Simmons?

A. No.

Q. That is, in comparison to the other kind?

A. The other kind, the local tickets, are much more frequent. There are, however, a great many coupon tickets sold.

Q. What about a tourist trip from San Francisco in a tourist car routed from San Francisco through to New York? In that instance what do you report?

A. That line runs via New Orleans and we report California's mileage proportion of the through rate collected from San Francisco to Washington provided the passenger travels through between those points.

Q. There is a transfer at Washington that you are not concerned with?

A. If the passenger had New York as his destination, he would transfer at Washington.

Q. Transfer on the Pennsylvania lines?

A. Yes, or on the B. & O.

Q. Do you control the sleeping car privileges on the Pennsylvania lines?

A. Yes, sir.

Q. Then, as a matter of fact, Mr. Simmons, you only report to the State of California the mileage proportion of all interstate earnings between Chicago and points west of Chicago and California? Now I put the accent on the word "all"; you note.

47

A. No.

Q. When it comes to reporting the mileage proportion to the State of California, you report the mileage proportion on all interstate earnings between San Francisco and points west of Chicago, St.

Louis and New Orleans that had anything to do with transportation in California?

The Court: Just a moment, before you start in about that, let us see if I understand this.

Q. Your figures, Mr. Simmons, are made up from the ticket coupons returned to the office?

A. Yes, sir, or in the case of cash fares, from the berth checks, the cash fare checks.

Q. And those will show the coupon ticket where the passenger started in and where his trip ended?

A. Yes sir, that is correct.

Q. They will show a through ticket from where he started in to the termination of that through ticket?

A. Yes sir.

Q. Would they show any others?

A. It would also show in the case of a coupon ticket where the transfers from one car to another are indicated, in other words, the points of transfer.

48 Q. On the so-called through ticket, would there be shown the point of transfer?

A. Wherever it is necessary to transfer from one car to another in order to reach his destination.

Q. I don't understand the system on, as you use the expression the through ticket. Is there any transfer—on the other hand, does he remain in the same sleeper from one place to another?

A. No sir, that is what we call a local ticket. Where he does that, the ticket consists of one part, where the passenger remains in one car, where it is not necessary for him to change to another car in order to reach his destination.

Q. That is called a local ticket?

A. Called a local ticket. The other kind of ticket is a coupon ticket which might consist of two, three, four or five different coupons, depending on how many times it is necessary for the passenger to transfer from one car to another in order to reach his destination. In both cases California is credited with its mileage proportion of such fares where they touch California. I might say, however, that it seems immaterial whether we pro-rate on the San Francisco, New York mileage, or the San Francisco, Chicago mileage, that is to say, if we take the fare from Chicago to San Francisco.

49 Mr. Benjamin (interrupting): If your honor please, I object very much to this volunteer statement and argument by the witness going into the record.

The Witness: Very well, pardon me for that.

Mr. Corbett: It is in response to the court's question.

Mr. Benjamin: I dislike to interrupt the witness in his answer to the court's question, but it is my record that I must stand on.

The Witness: Pardon me for going into it.

The Court: I don't see how immaterial testimony, if it is immaterial, can possibly affect a case of this kind, and if it is not immaterial, why it certainly should be elicited.

Mr. Benjamin: The witness started in on a matter of argument rather than on an answer to your honor's question.

Mr. Corbett: No, an explanation, Mr. Benjamin.

The Court: I think you may make the statement, Mr. Simmons There is no jury here to be prejudiced.

A. Let us take two cases, to make a thorough illustration. One is the man who buys a through ticket from New York to San Francisco, a coupon ticket, splitting at Chicago, which means he must transfer from one car to another at Chicago. Having pur-
50 chased a through Pullman ticket, we are able to identify him as a through passenger, and he paid $18 for that through ticket from New York to San Francisco. That $18 is pro-rated so that California receives credit for its mileage proportion of that $18. based on the mileage in California as compared with the total mileage between San Francisco and New York. Take the other case, to further illustrate, we pick up a passenger at Chicago who is going to San Francisco. He may have come from New York or he may not. If he did come from New York, we don't know whether he came in a Pullman car or rode in a coach or a chair car or how he came, nor do we know by what route he came. We sell him a separate ticket, a separate contract, reading from Chicago to San Francisco. Being unable to identify him as a through passenger, if he was a through passenger, and his fare from Chicago to San Francisco, $13, is, consequently, pro-rated according to the mileage from San Francisco to Chicago. I think that illustrates both cases. And the result to California in dollars and cents would be practically the same in both cases. The $13 fare being pro-rated on the mileage in California as compared with the mileage between San Francisco and Chicago, and the $18 fare being pro-rated on the mileage in California as compared with the
51 mileage from San Francisco to New York. So that, with the exception of possibly some difference in pennies, the amount applicable to California would be practically the same in both cases. I think perhaps that describes the two kinds of tickets.

Mr. Benjamin: Let me, Judge, if I may, ask a question or two?
The Court: Yes.

Mr. Benjamin proceeds with his cross-examination:

Q. What is the mileage from San Francisco to the state line of California?

A. I do not know what the distance is from San Francisco to the state line. The mileage from San Francisco to Chicago depends entirely upon the route selected, whether by the Southern Pacific, Union Pacific and the Northwestern. By the Southern Pacific and Union Pacific and the Northwestern, the distance is, I believe, some 2,260 miles. Following the same course from Chicago to New York by the Lake Shore and Michigan line and the New York Central, the mileage is a little over 900 miles. The Pullman lower berth from San Francisco to Chicago is $13 and from Chicago to New York is $5.

Q. And you say that the percentage, the division, would be practically the same?

A. Yes sir, the proportion. Of course, you will understand there will be slight changes on account of the different routes. The mileage is different; for instance, the mileage over the Santa Fe
52 is much greater than over the Southern Pacific and Union Pacific and Northwestern between San Francisco and Chicago.

Q. When the mileage increases outside of California, it decreases the proportion to California?

A. It varies according to the routing, of course.

The Court:

Q. Are there any other fares that your records would show excepting those you have mentioned?

A. Well, of course, we have the fares local to the State of California, which I believe are not in question.

Q. But as to those, the interstate trips, are there any other fares that your records will show the history of the passenger's trip, where he commenced and where he ended?

A. No other classification, of course interstate fares that do not touch California.

Mr. Corbet (on behalf of the plaintiff): We now offer in evidence a certified copy of a document reading—it is headed: "Monday, 3rd July, 1911." It is signed by "T. M. Eby, Secretary", and certified to by Mr. Eby, and I read it as follows:

"Board in session. All members present.

Be it remembered on this day that the State Board of
53 Equalization has, in accordance with the provisions of chapter 335 of the laws of 1911, been in continuous session from the first Monday in March, 1911, to and including this day.

That during said period of time this board has made diligent inquiry and examination to ascertain all property and companies subject to assessment and taxation for State purposes as required by the constitution of this State; that said board has faithfully complied with all the duties imposed upon it by the constitution and laws of the State of California; that the board has not imposed any unjust or double assessment through malice or ill will or otherwise; nor allowed any company or property to escape a just assessment through favor or reward or otherwise.

And now, on this day, the record of assessment for state taxes having been completed in all details and said record having been duly certified by the chairman and secretary of this board, as provided by law, it is ordered that said record of assessments for state taxes be delivered to the Controller.

In accordance with the foregoing and under and in pursuance of the provisions of sec. 19 of chapter 335, of the laws of 1911, at 12

o'clock meridian of this day, the secretary of the State Board
54 of Equalization duly delivered to the Controller of the state the record of assessments for state taxes.

(Signed) T. M. EBY,
Secretary."

And that is followed by the certificate of Mr. Eby. I ask, if your honor please, that that be admitted in evidence and marked as Plaintiff's Exhibit "1."

Mr. Benjamin: It is objected to as irrelevant and immaterial, and having nothing to do with the issues of this case. It is merely a copy of a certificate of the board as to the record of assessments before they were turned over to the Controller, to the effect that the board made this assessment and that it is made on certain days and in a certain manner with respect to certain property, all of which is admitted in this case.

The Court: The objection will be overruled.

Mr. Corbet: We now offer in evidence another document that is entitled "Meeting of Saturday, May 20, 1911", which I hand to counsel.

Mr. Benjamin: I would like to have your honor examine that before you rule upon it. We object to it as it is a certain statement in which they say they assess the "following Car Co.'s" and
55 among them is the Pullman Company. It is irrelevant and immaterial, so far as this case is concerned, as the fact is that they did assess the Pullman Company.

Mr. Corbet: It shows the action taken by the board in this case and we think it is material.

The Court: Go ahead and read it.

Mr. Corbet reads it:

"*Minutes of State Board of Equalization for Meeting of Saturday, May 20th,* 1911.

Board met. Quorum present.

The board this day considered and determined that the following 'Car Companies' shall be assessed by this board for the gross receipts of their rolling stock:

'Car Co.'s'

Armour Car Lines;
Associated Oil Company;
Cudahy Packing Company;
Live Poultry Transportation Company;
Pacific Fruit Express;
Pullman Company;
Santa Fe Refrigerator Dispatch Company;
Swift Refrigerator Transportation Company;
Union Oil Company;
Union Refrigerator Transit Company;

Union Tank Line.

The secretary was instructed to notify the county and city officials of this order.

See circular #11 attached.

T. M. EBY,
Secretary."

56 Mr. Corbet: It is certified, and we ask that it be marked as an exhibit in the case.

Mr. Benjamin: I object to it upon the grounds last stated, your honor.

The Court: The objection will be overruled. Mark it, Mr. Clerk, as Plaintiff's Exhibit "2."

Mr. Benjamin (examining another document handed him by counsel): There is no objection as to the authenticity of it, your honor, but the objection is to the fact that it is not relevant or material.

Mr. Corbet: In other words, it is a document that Mr. Benjamin said he would not require us to have certified. We offer it in evidence.

The Court: Read it, please.

Mr. Corbet (reading):

"*Circular No.* 11.

Office of State Board of Equalization, State of California.

Sacramento, May 20, 1911.

To the County Assessor and the City Clerk and City Assessor:

DEAR SIR:

The State Board of Equalization has considered the matter of the assessment of 'sleeping car, dining car, drawing-room car and palace car companies, refrigerator, oil, stock, fruit, and other car

57 loaning, and other car companies', for the assessment year of 1911 and will, for said year, assess the following companies for their rolling stock and franchises:

Armour Car Lines;
Associated Oil Company;
Cudahy Packing Company;
Live Poultry Transportation Company;
Pacific Fruit Express;
Pullman Company;
Santa Fe Refrigerator Dispatch Company;
Swift Refrigerator Transportation Company;
Union Oil Company;
Union Refrigerator Transit Company;
Union Tank Line.

The assessment of said companies by this board exempts the rolling stock and franchises thereof from the ordinary local taxation, except taxes to pay principal and interest on past bonded indebtedness existing prior to November 8, 1910, and taxes for the Panama-Pacific International Exposition.

The rolling stock of other 'car companies' which was in your county on March 6th last will be assessed by you and subject to all local taxes.

This is the first assessment by this board of car companies under the new tax law and reports to this board from such companies are not so full and complete as is desired; therefore, for the succeeding years' assessment it may be found necessary to vary this
58 order as to car companies to be assessed by this board.

Respectfully,

STATE BOARD OF EQUALIZATION.
A. B. NYE,
Chairman State Board of Equalization.
T. M. EBY,
Secretary."

We ask that that be admitted and filed as one of the plaintiff's exhibits in the case.

The Court: The objection to it is overruled. Mark it, Mr. Clerk, as Plaintiff's Exhibit "3."

Mr. Corbet: We now offer in evidence another document that is entitled: "Office of the State Board of Equalization, Sacramento, California," a certificate by A. B. Nye, chairman, and T. M. Eby, secretary, of the State Board of Equalization, and signed by them in their official capacities, and subscribed and sworn to on the 3rd day of July, 1911, before Alexander McCabe, private secretary to the Governor, it being certified under date of March 6, 1917. It shows the amount of taxes assessed to The Pullman Company. I would like to have it considered as offered in evidence and read in evidence.

Mr. Benjamin: That is only a copy of the original assess-
59 ment roll, descriptive of the tax. All those facts have been admitted and I can't see the relevancy or materiality of proving by the assessment roll that which has already been admitted by the answer to the complaint. That is all it amounts to—it is irrelevant and immaterial, because the fact and issue are admitted.

The Court: The objection is overruled.

Mr. Corbet: And it may be considered as read, your honor?

The Court: Yes. Mark it, Mr. Clerk, as Plaintiff's Exhibit "4."

It reads as follows:

"Record of Assessments for State Taxes for the Year 1911.

Assessments of Quasi-public Corporations for Property Used Exclusively in the Operation of Their Business in the State of California.

Assessed to all Owners When Known and When Unknown to Unknown Owners.

The word 'Company' and the word 'Companies' used in this record, include persons, partnerships, joint stock associations, companies and corporations.

Foreign Corporations.

No. of company.	Name of company.	Post-office address.
322,809, 1219	Pullman Company, The	Pullman Bldg., 79 East Adams St., Chicago, Ill.

60 Description of Operative Property.

Real estate other than city and town lots. Subdivisions of sections, or metes and bounds; city and town lots, improvements, personal property, franchise.

Such operative property, real and personal, as may have been agreed upon between said company & the county assessor.

(On Outside Covers of Book.)

Quasi-Public Corporations.

Section, —.
Township, —.
Range, —.
Base and
Meridian, —.

City or Town, —.
Lots, —.
Fraction Lot, —.
Block, —.

Number of acres, —.

(On Back of Book.)

Assessments for State Taxes, 1911.

Quasi-public Corporations.

Board of Equalization.

Gross receipts to December 31, 1910.	Tax thereon under section 14 of article 13, constitution.	First half of tax.
$1,905,302.97	$57,159.08	$28,579.54
15% added to first half of tax, $—.	5% added to first half of tax, $—,	Date of payment of first half of tax, 8-10-11.
Controller's certificate to treasurer.	Second half of tax, $28,579.54.	5% added to second half of tax, $—.
Number 233.	Controller's certificate to treasurer.	Date, —.
Date of payment of second half of tax, 8-10-11.		'Charter forfeited to the state' or 'Right to do business forfeited.'

61

Number 235.
Remarks —.
Filed protest.

STATE OF CALIFORNIA,
County of Sacramento, ss:

I, John S. Chambers, Controller of the State of California, do hereby certify: That, as such officer, viz. Controller, I have in my possession, and I am the legal keeper of the original 'Record of assessments for state taxes' of the State of California for the year 1911; that said 'Record of assessments for state taxes' was delivered to my predecessor, as such Controller, pursuant to the statute in such case, made and provided, by the secretary of the State Board of Equalization for said state, having attached thereto the certificate of the chairman and secretary of the State Board of Equalization in the form required by law; that the foregoing and attached writing is a correct copy of a specified part of the said original

62 'Record of assessments for state taxes' in my possession, viz. that part pertaining to and showing the assessment and the record of assessment of the operative property within the State of California, of The Pullman Company, a corporation, for state taxes for the year 1911.

In witness whereof, I have hereunto set my hand and official seal, this 1st day of March, A. D. 1917.

JOHN S. CHAMBERS,
[SEAL.] *Controller for State of California."*

Mr. Corbet: We now offer a portion of the "Special report of the California State Board of Equalization on the relative burden of state and local taxes" of 1912, as found on page 12, just the first paragraph.

Mr. Benjamin: For the purposes of our objection to this, I will read to your honor what the matter is, not for the record, but for your honor's ruling:

"The average ratio of the tax upon the property taxed for local purposes to the full cash value of the property has been ascertained by this board to be, as already stated, approximately 1.14%, or, more exactly, 1.1386%."

We object to the introduction of the evidence upon the
63 ground that it is irrelevant and immaterial and does not tend to prove or disprove any of the issues of the case.

The Court: The objection will be overruled.

Mr. Corbet: We offer this in evidence by reading it. It is part 1, relating to the average burden of local taxation:

"The average ratio of the tax upon the property taxed for local purposes to the full cash value of the property has been ascertained by this board to be, as already stated, approximately 1.14%, or, more exactly, 1.1386%."

Mr. Benjamin: That is a statement made when, Mr. Corbet?

Mr. Corbet: It relates to this time.

Mr. Benjamin: This was published in 1913 and we are trying the case of the tax in 1910 and 1911.

Mr. Coogan: That had reference to 1910.

Mr. Benjamin: It does not say so.

Mr. Corbet: It had direct reference to that. The Board of Equalization was able to make the special investigation of which the results are now enumerated without exceeding the appropriation made for its use in 1911. That is the statement here.

Mr. Benjamin: The special report was compiled in September, 1912, Mr. Corbet.

Mr. Corbet: It could not have been for any other purpose
64 than for the year immediately preceding, because it was directed to the Governor on the 13th of January, 1913.

Mr. Benjamin: I say, it was compiled in September, 1912, and the taxes for two years in the cases that you have on trial were paid before that.

The Court: Let it be known as Plaintiff's Exhibit "5."

FREDERICK L. SIMMONS was here called to the witness stand by Mr. Benjamin to testify on behalf of the defendant.

Direct examination:

The Witness: I am familiar with the railroad companies in California operating pullman cars. They are the Southern Pacific, the Santa Fe, the Yosemite Valley, the Western Pacific, and the Salt

Lake Route, these are all of the lines that run out of the State of California, also running in the State of California.

Q. Are there any other railroads in California that use any sleeping cars other than Pullman cars?

Mr. Corbet: That would be immaterial, because of the fact that the controversy here is one over the interstate earnings, and that would only affect the business of the plaintiff company in connection with the interstate business.

65 The Court: Read the question, Mr. Reporter.

The Court: The objection will be overruled.

(To which ruling the plaintiff then and there duly excepted, and said exception is herein designated as Exception No. 1.)

A. I don't know of any.

Mr. Benjamin:

Q. Your company has a monopoly of the sleeping car business in this state, has it not?

Mr. Corbet: We object to that as calling for a conclusion, your honor.

Mr. Benjamin: That is a fact or not a fact, we submit, your honor.

The Court: The objection will be overruled.

(To which ruling the plaintiff then and there duly excepted, and said exception is herein designated as Exception No. 2.)

A. Yes sir.

Q. Have you some extensive repair shops or paint shops here in California?

A. Yes sir, we have shops at Richmond, California.

Q. Do you do any car building there at Richmond, California?

66 A. No sir, we do not. The construction plants are at Chicago and at the Town of Pullman. The plant at Richmond is only used for repairing. All of this property of the Pullman Company, cars, plant, repair plant, factory plant, are all used and devoted exclusively to the one and the same purpose which we have pleaded in our complaint, that is the business of furnishing sleeping cars for railroads.

Mr. Corbet: Subject to its relevancy, counsel will stipulate that the average ratio of taxes upon the property taxed for local purposes to the cash value of the property has been ascertained by this board to be as I stated, approximately 1.14%, or more exactly, 1.1386%, where taxed for municipal and county purposes, and exclusive of state taxes.

Mr. Benjamin: Exclusive of state taxes, with the exception of the Panama Pacific tax.

Mr. Corbet: Yes.

Mr. Benjamin: That was one special tax, however, that was levied in addition to that specified.

Mr. Corbet: Yes.

Mr. Benjamin: That is the explanation of that figure. We object to the introduction of the matter as being irrelevant and immaterial.

67 Mr. Corbet: You will stipulate that it was exclusive of the state tax and the Panama-Pacific tax?

Mr. Benjamin: Yes, that is all right.

Mr. Corbet: Exclusive of the state tax and Panama-Pacific tax.

Mr. Benjamin: Exclusive of any state tax with the exception of the Panama-Pacific tax.

Mr. Corbet: With that admission, your honor, we ask for the admission of this document.

Mr. Benjamin: Let us not misunderstand each other. In addition to this board rate, the Panama-Pacific tax was that. Local taxation was not resorted to for state purposes at all.

Mr. Corbet: And this was made upon the assessed value of property for taxation other than state taxes.

Mr. Benjamin: Yes.

The plaintiff than offered in evidence the minutes of the State Board of Equalization for the meeting of Monday, August 7th, 1911, certified to.

Mr. Benjamin: To this, if your honor please, we object and our objection is perhaps even more pertinent than any of the objections offered to the other exhibits that have been proposed to be

68 introduced. Our objection to this proposed exhibit is that it is irrelevant and immaterial, and does not tend to prove or disprove any of the issues in the case, and does not concern the assessment of this company in any matter of the assessment which is involved in this action. I may state, for the purpose of your honor's understanding of my objection, that this purports to be, and I assume is, a copy of the minutes of the State Board of Equalization of August 7th, 1911.

Mr. Corbet: Certified to, Mr. Benjamin.

Mr. Benjamin: Yes, at which time an assessment, for a different purpose, of railroads in this state, was made by the State Board of Equalization. You will appreciate that the assessment involved in this case was made between the first Monday in March and the third Monday before the first Monday in July, assessed, and the matter was closed at that time. The tax levy, which the plaintiff is attacking, was a tax levy upon the property in that period. This is an action of the board taken in August, 1911, after the assessment period for state purposes had closed, and is apparently an assessment for another and different purpose, and under another and a different system. I assume that this might be for the Panama-Pacific bond tax assessment, or some such assessment as that. In other words, it is

69 apparently spread upon the minutes, some ad valorem assessment for certain purposes and the Pullman Company is included as one of those companies, as based on that system in this particular subject. It therefore has no bearing upon this case, and is in line with an attempt, after having withdrawn the issue of valu-

ation of the property of the Pullman Company from this case, to again endeavor to inject by this method the question of the value of the physical property. If there is any question in your honor's mind as to the facts which I am stating, we can introduce evidence showing that that is the exact fact with respect to this particular exhibit. I now see the reason why Chicago counsel suggested to the local counsel the introduction of the portion of the records of the State Board of Equalization as to the burden of assessment, after having withdrawn the issue of value of their property, in this way they are endeavoring to raise the issue again.

Mr. Corbet: Our object in introducing that, may it please your honor, is that we think it is material.

The Court: The objection will be overruled. I don't see any materiality in it, but I will wait until your case is all in.

70 Mr. Corbet: We ask to have it considered as read in evidence, as part of the record, and be marked as Plaintiff's Exhibit "6."

The Court: Let it be so marked.

It reads as follows:

"STATE OF CALIFORNIA,
County of Sacramento, ss:

I, T. M. Eby, secretary of the State Board of Equalization for the State of California, do hereby certify: That I am the legal keeper of, and have in my possession, the original record of the business transacted and the proceedings taken by the State Board of Equalization for the State of California for the year 1911, at each and every meeting of said board; that the foregoing and attached writing is a correct copy of that part of the said record of the business transacted and proceedings taken by the State Board of Equalization for said year, in my possession, which pertains to and shows the proceedings taken by said board at a regular adjourned meeting thereof, held at the office of said board at the State Capitol, in the City of Sacramento, State of California, on the 7th day of August, 1911, in fixing, establishing and levying an ad valorem rate of taxation and assessment upon the property within the State of California of The
71 Pullman Company, a corporation, pursuant to the provisions of section 22 of article IV of the Constitution of the State of California, for the year 1911.

In witness whereof, I have hereunto set my hand this 5th day of March, A. D. 1917.

T. M. EBY,
Secretary of the State Board of Equalization of the State of California.

Minutes of the State Board of Equalization for Meeting of Monday, August 7th, 1911.

Board met.
Roll called.
Present: Messrs. Collins, McElvaine, Mitchell, Rolkin and Chairman Nye.

This being the day set by law for the assessment of railroads, the board proceeded to assess such railroads as were operating in more than one county in the state, whereupon the following proceedings were had:

All assessments of railroads hereinafter noted were made upon a unanimous affirmative vote of each member present, there being no dissenting vote:

On motion of Mr. McElvaine, seconded by Mr. Collins, the Nevada Co. N. G. R. R. was assessed for $177,337.

On motion of Mr. McElvaine, second- by Mr. Collins, the Tonopah & Tidewater R. R. was assessed $628,783.

72 On motion of Mr. McElvaine, seconded by Mr. Collins, the Northern Electric Rwy. was assessed for $709,775.

On motion of Mr. McElvaine, seconded by Mr. Collins, the Boca & Loyalton R. R. was assessed for $192,868.

On motion of Mr. Collins, seconded by Mr. McElvaine, the S. F. Vallejo & Napa Valley R. R. was assessed for $273,763.

On motion of Mr. McElvaine, seconded by Mr. Mitchell, the Lake Tahoe Rwy. was assessed for $73,268.

On motion of Mr. McElvaine, seconded by Mr. Rolkin, the Nevada-Cal-Oregon Rwy. was assessed for $630,237.

On motion of Mr. McElvaine, seconded by Mr. Rolkin, the Sierra Valleys Rwy. was assessed for $54,950.

On motion of Mr. Mitchell, seconded by Mr. Collins, the Sierra Rwy. of Cal. was assessed for $812,757.

On motion of Mr. Collins, seconded by Mr. Mitchell, the San Pedro, L. A. & Salt Lake R. R. was assessed for $2,696,344.

On motion of Mr. Collins, seconded by Mr. Mitchell, the Northwestern Pac. R. R. was assessed for $4,750,498.

On motion of Mr. McElvaine, seconded by Mr. Rolkin, the Central Pacific Rwy. was assessed for $23,463,675.

73 On motion of Mr. Collins, seconded by Mr. McElvaine, the Southern Pacific R. R. was assessed for $66,040,750.

On motion of Mr. Mitchell, seconded by Mr. Collins, the South. Pac. Coast Rwy. was assessed for $2,430,175.

On motion of Mr. McElvaine, seconded by Mr. Collins, the Nevada & Cal. Rwy. (N. G.) was assessed for $243,112.

On motion of Mr. Collins, seconded by Mr. Mitchell, the Nevada & Cal. Rwy. (Mohave-Keeler Ex.) was assessed for $1,000,300.

On motion of Mr. McElvaine, seconded by Mr. Mitchell, the Pullman Company was assessed for $2,995,760.

On motion of Mr. Mitchell, seconded by Mr. Collins, the Yosemite Valley R. R. was assessed for $392,145.

On motion of Mr. Collins, seconded by Mr. Mitchell, the Ocean Shore R. R. was assessed for $95,340.

On motion of Mr. McElvaine, seconded by Mr. Mitchell, the San Juan Pacific Rwy. was assessed for $21,600.

On motion of Mr. Collins, seconded by Mr. Mitchell, the Pajaro Valley Con. R. R. was assessed for $186,750.

On motion of Mr. McElvaine, seconded by Mr. Mitchell, the Pacific Coast Rwy. was assessed for $478,400.

74 On motion of Mr. Mitchell, seconded by Mr. Collins, the Western Pacific Rwy. was assessed for $5,822,550.

On motion of Mr. Collins, seconded by Mr. Mitchell, the Central Cal. Traction Co. was assessed for $219,600.

On motion of Mr. McElvaine, seconded by Mr. Mitchell, the Atchison, Topeka & Santa Fe Rwy. was assessed for $26,776,154.

Total assessments this day made, $141,166,891.

T. M. EBY,
Secretary."

Counsel for plaintiff and defendant thereupon stipulated that the operative property of The Pullman Company, plaintiff herein, located in the State of California, including its rolling stock and franchises, had not been subjected to any local taxation of any kind, either state, county or municipal, nor any license tax, other than the tax involved in this action.

The foregoing is all of the evidence that was introduced at the trial of the said action, and thereafter the cause was argued and submitted to the court for decision, and the court made its find-

75 ings of fact and conclusions of law in favor of the defendant and against the plaintiff, on which judgment was entered in favor of the defendant and against the plaintiff on the 5th day of December, A. D. 1918; and thereafter, on the 10th day of December, A. D. 1918, said plaintiff, The Pullman Company, duly and within due time, served upon the defendant's attorneys, and thereafter on December 11th, A. D. 1918, duly filed with the clerk of the Superior Court of the State of California, in and for the City and County of San Francisco, a notice, of which the following is a copy:

[Title of Court and Cause.]

"To Friend W. Richardson, as Treasurer of the State of California, defendant in the above-entitled action, and to Hon. U. S. Webb, Attorney General of the State of California, and Raymond Benjamin, Esq., Chief Deputy Attorney General, attorneys for said defendant:

You and each of you will please take notice that the above-named plaintiff, The Pullman Company, intends to move the above-entitled court to vacate and set aside the decision and judgment of the court rendered and entered in the above-entitled cause, and to grant a new trial of said cause, upon the following grounds, to wit.

76 1. Insufficiency of the evidence to justify the decision.

2. That the decision is against law.

3. Errors in law occurring at the trial and excepted to by this plaintiff.

Said motion will be made on the Minutes of the court in said cause.

Dated December 10th, 1918.

T. C. COOGAN AND
CORBET & SELBY,
Attorneys for Plaintiff, The Pullman Company.

Thereafterwards, and on the 3rd day of January A. D. 1919, the said plaintiff, The Pullman Company, duly and within due time, served upon defendant's attorney, and filed with the clerk of said court herein, a notice, of which the following is a copy:

[Title of Court and Cause.]

"To the above-named defendant and to his attorneys, U. S. Webb, Esq., Attorney General of the State of California, and Raymond Benjamin, Esq., Chief Deputy Attorney General, attorneys of record for said defendant:

You will please take notice that the plaintiff, The Pullman
77 Company, pursuant to its notice of intention so to do, heretofore given and served herein, will on Friday, January 10th, A. D. 1919, at the honr of ten (10) o'clock A. M., or as soon thereafter as counsel can be heard, at the court room of department 8 of the above entitled court, situate in the City Hall, located between Van Ness avenue, Polk street, McAllister street and Fulton street, in the City and County of San Francisco, State of California, move the court to set aside the decision and judgment of the court rendered and entered in the above entitled cause, and to grant a new trial of said cause upon the following grounds, to wit:

1. Insufficiency of the evidence to justify the decision.

2. That the decision is against law.

3. Errors in law occurring at the trial and excepted to by this plaintiff.

Said motion will be made on the minutes of the court in said cause.

Dated January 3, 1919.

T. C. COOGAN,
CORBET & SELBY,
Attorneys for Plaintiff, The Pullman Company.

78 Service of the within and foregoing notice of motion for new trial admitted by copy this 3rd day of January, A. D. 1919.

U. S. WEBB,
Attorney General of the State of California;
RAYMOND BENJAMIN,
Chief Deputy Attorney General,
Attorneys for Defendant."

And thereafterwards, and on said 10th day of January, A. D. 1919, at ten o'clock A. M., said motion coming on regularly to be heard, pursuant to said notice, and the said motion was by the said court on said January 10th, A. D. 1919, denied, to which ruling of the court the plaintiff, The Pullman Company, then and there duly excepted, and said exception is herein designated as Exception No. 3.

Specifications of Errors in Law Occurring at the Trial and Excepted to by the Plaintiff, The Pullman Company.

The errors of law occurring at the trial, excepted to by the plaintiff, The Pullman Company, are three in number, and are 79 assigned as such in the body of the foregoing bill of exceptions; error No. 1 being noted on page sixteen; error No. 2 being noted on page sixteen; and error No. 3 being noted on page 21b.

Plaintiff now specifies the following particulars in which the evidence is alleged to be insufficient to justify the decision.

I.

The evidence is insufficient, and there is no evidence to justify that portion of paragraph II of said decision, reading as follows:

"That the allegations contained in paragraph V of plaintiff's amended complaint are not true."

By said decision the court holds that the allegations contained in said paragraph V, viz.:

"At some time between the first day of April, 1911, and the third Monday before the first Monday in July, 1911, the exact time being to plaintiff unknown, said board assessed and levied a tax of three (3) per cent upon the gross receipts of plaintiff for the year ending December 31, 1910, on all business of plaintiff beginning and ending entirely within said state, and that proportion of 80 the gross receipts from all plaintiff's business passing through, into or out of said state that the mileage within said state bore to the total mileage over which such interstate business was done, to wit: upon the sum of one million nine hundred five thousand, three hundred two and 97/100 ($1,905,302.97) dollars, which said tax amounted to the sum of fifty-seven thousand, one hundred

fifty-nine and 8/100 ($57,159.08) dollars. Said tax was assessed to the plaintiff." are not true. There was no evidence to justify that decision by the court, as the evidence in the case shows affirmatively that each and all of the allegations contained in said paragraph V of said plaintiff's amended complaint are true.

II.

That the evidence is insufficient and there is no evidence to justify that portion of paragraph II of said decision, reading as follows:

"That the allegations contained in paragraph XIV of plaintiff's amended complaint are not true."

By said decision the court holds that the allegations contained in paragraph XIV, viz.:

"Said tax amounting to twenty-eight thousand, nine hundred ninety-five and 48/100 ($28,995.48) dollars and the whole
81 thereof so levied, charged and collected from the plaintiff upon the assessment so, as aforesaid, made by said State Board of Equalization upon said sum of nine hundred and sixty-six thousand, five hundred sixteen and 17/100 ($966,516.17) dollars and upon any part, portion or proportion of the gross receipts from plaintiff's said business or any business passing through, into or out of said State of California, and passing from one state to another state, was and is a tax on the earnings of the plaintiff in its business conducted from one state to another state or states and was and is a tax on commerce among the several states, and a burden on such commerce, and was and is a tax on the income of property and business of the plaintiff situated without and beyond the State of California, and the enforcement of said tax against the plaintiff and said payment thereof required by the said E. D. Roberts, as said Treasurer, as provided by said statute of California and as hereinbefore set forth did in fact take from the plaintiff its property and deprive the plaintiff of its property, to wit: said sum of twenty-eight thousand, nine hundred ninety-five and 48/100 ($28,995.48) dollars for a tax levied under and by virtue of the laws of California upon the income of the property and business of the plaintiff situated without and beyond said State of California; that plaintiff's right
82 to continue to do business in said State of California was and is made dependent on the payment of said tax on or before a date fixed by said statute." are not true.

There was no evidence to justify that decision by the court, as the evidence in the case shows affirmatively that each and all of said allegations contained in paragraph XIV of said plaintiff's amended complaint are true.

III.

That the evidence is insufficient and there is no evidence to justify that portion of paragraph III of said decision, reading as follows:

"That between the first day of April, 1911, and the third Monday before the first Monday of July, 1911, the State Board of Equalization of the State of California did levy a tax for state revenue upon the franchise, cars and other rolling stock, and all other property, tangible and intangible, real, personal and mixed, of plaintiff, and all and every part thereof, and none other, used exclusively in the operation of plaintiff's business in said state; that said property and the whole thereof was then and at all times had been employed by plaintiff as a whole in a going business, and was then and at all times had been engaged and used as a unit by plaintiff
83 in such business in the State of California; that in its business in the State of California plaintiff then had and at all times possessed and enjoyed a monopoly of and in such business to the exclusion of all other persons and corporations; that the value of said property and the whole thereof as a unit for purposes of taxation was, in January, 1911, ascertained and determined by the legislature of the State of California to be of that value which by levying thereon the rate of taxation levied upon other property and against other persons similarly situated would result in a tax upon the value of said property so employed in said business equal in amount to three per cent of that part of the gross receipts of plaintiff for the year ending December 31, 1910, earned in its said business performed entirely within the State of California and attributable upon a proportionate mileage basis to its said business done entirely within the State of California, as said gross receipts from operation of such business are defined by section 14 of article XIII of the Constitution of the State of California; that the tax levied upon said property of plaintiff and the whole thereof, in accordance with and based upon the value of the same as found and taxed by the legislature of the State of California, was and is the sum of fifty-seven thou-
84 sand one hundred fifty-nine and 8/100 dollars ($57,159.08); that the gross receipts of plaintiff which were reported to and considered by and to which said State Board of Equalization resorted to ascertain and determine the tax that plaintiff should pay upon its said property in accordance with its value, ascertained and determined as a unit as hereinbefore alleged, were and all of them were receipts for the year ending December 31, 1910, arising solely from the business done by plaintiff entirely within the State of California, and that proportion of its interstate earning arising from its business and attributable to the State of California upon a mileage basis, as said gross receipts from operation are defined by section 14, article XIII of the Constitution of the State of California, and none other; that all of said receipts were earned by plaintiff by and with and through the operation of said property of plaintiff in its business so valued and situated, and so used and engaged as a unit in the said business of plaintiff within the State of California, and included within said assessment of plaintiff's property, and no part of said assessment or of said tax is or was against or upon, or based upon plaintiff's earnings, as earnings arising from its business con-

ducted either in this or any other state, or between this and
85 any other state, or between other states passing through this state, and no part of said assessment or of said tax was or is an assessment or a tax upon plaintiff's income as income arising from said or any of said property, or any other property, or from said or any other business of plaintiff situated within or without this state."

That the said plaintiff now specifies the particulars in which said decision is against law.

1. The court erred in rendering its decision for said defendant.

2. The court erred in rendering its decision against the said plaintiff.

Respectfully submitted,

T. C. COOGAN,
BURKE CORBET,
CORBET & SELBY,
Attorneys for Plaintiff.
G. S. FERNALD AND
F. B. KELLOGG,
Of Counsel.

January 13, 1919.

Due service of the foregoing proposed bill of exceptions admitted upon us at the City and County of San Francisco and State
86 of California.

U. S. WEBB,
Attorney General of the State of California, and
ROBERT W. HARRISON,
Chief Deputy Attorney General,
Attorneys for Above-named Defendant.

It is hereby stipulated that the foregoing bill of exceptions to be used on appeal from the judgment by the plaintiff, The Pullman Company, in the above entitled action, sets forth all of the evidence introduced at the trial of said action, is correct, and that the same may be settled and allowed as presented.

Dated, January 31, 1919.

U. S. WEBB,
Attorney General of the State of California,
RAYMOND BENJAMIN,
Attorneys for Defendant.
T. C. COOGAN,
CORBET & SELBY,
Attorneys for Plaintiff.

87 *Judge's Certificate.*

The foregoing bill of exceptions, to be used on appeal from the judgment rendered and entered in the action above set forth, wherein

The Pullman Company is plaintiff, against Friend W. Richardson, as Treasurer of the State of California, defendant, in favor of said defendant and against said plaintiff, contains all of the evidence introduced at the trial of said action. Said bill of exceptions was prepared, served and presented to the judge of said court within the time allowed by law, and being now properly engrossed and agreed to by said parties, respectively, I do hereby certify that the foregoing bill of exceptions is settled as hereinbefore set forth, and allowed by the court.

Dated, January 31, A. D. 1919.

GEO. A. STURTEVANT,
Judge of said Superior Court.

(Endorsed:) Filed Feb. 3, 1919. H. I. Mulcrevy, Clerk, by H. Brunner, Deputy Clerk.

88 *Stipulation to Transcript.*

It is hereby stipulated that the foregoing transcript on appeal is correct; that it contains full, true and correct copies of all the papers therein set forth now on file in the office of the county clerk of the City and County of San Francisco, State of California; that the minute orders therein contained are full, true and correct copies therof as made and entered in the minutes of the Superior Court; that the said foregoing papers shall constitute the transcript on appeal in this cause and that the appeal may be heard and determined thereon.

Dated, April 30, 1919.

U. S. WEBB,
Attorney General of the State of California.
RAYMOND BENJAMIN,
Attorneys for Respondent.
T. C. COOGAN,
CORBET & SELBY,
Attorneys for Appellant.
G. S. FERNALD,
F. B. DANIELS,
Of Counsel for Appellant.

89 *Clerk's Certficate to Transcript.*

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, H. I. Mulcrevy, county clerk of the City and County of San Francisco, State of California, and ex-officio clerk of the Superior Court in and for said city and county, hereby certify that I have compared the foregoing transcript with the original papers in said action, now on file in my office, and with the orders therein made and entered on the minutes of said court, and that the papers and

orders therein contained are full, true and correct copies of the originals on file in this office, and of the whole thereof.

I further certify that the erasures and interlineations appearing in the foregoing transcript were made before certifying thereto.

In witness whereof I have hereunto set my hand and affixed the seal of said Superior Court this — day of April, 1919.

[SEAL.] H. I. MULCREVY,
Clerk,

By —— ——,
Deputy Clerk.

90 In Bank, April 4, 1921.

S. F. Nos. 9080, 9081, 9082, 9083, 9084, 9085.

THE PULLMAN COMPANY (a Corporation), Plaintiff and Appellant,

v.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant and Respondent.

In Bank, April 4, 1921.

S. F. No. 9183.

WALKER D. HINES, as Director-General of Railroads, and THE PULLMAN COMPANY (a Corporation), Plaintiffs and Appellants,

v.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant and Respondent.

[1] Taxation—Levy Under Constitutional Amendment of 1910—Nature of Tax.—The taxes levied by section 14, article XIII, of the constitution are taxes upon property rather than upon receipts or income.

[2] Id.—Interstate Commerce Company—Basis of Valuation of Property.—In the taxation of interstate commerce transportation companies it is proper to consider as a basis on which to establish the value of such a company's property in this state the earnings derived from its property, tangible and intangible, within the state, and it is proper to consider the proportion of its receipts derived from its interstate business earned within the state as an element of that basis.

[3] Id.—Appointment of Interstate Earnings—Fairness of—Constitutional Method.—The system adopted by the state constitution for apportionment of interstate earnings is the fairest possible method of such apportionment, and by such method the state does not assert any jurisdiction over any earnings

from the interstate business, not actually derived from that portion of such business actually conducted within the state, and does not draw to itself earnings derived from capital or property elsewhere situated.

Appeals by Plaintiffs from a Judgment of the Superior Court, City and County of San Francisco, George A. Sturtevant, Judge in an Action to Recover Taxes Paid Under Protest.

Affirmed.

For Appellant: T. C. Coogan, Burke Corbet and Corbet & Selby; F. B. Daniels, G. S. Fernald, of Counsel.

For Respondent: U. S. Webb, Raymond Benjamin.

The plaintiff brought seven separate suits for the purpose of recovering from the Treasurer of the State of California taxes paid by it under protest. The taxes were levied at the rate of either three or four per cent upon the gross receipts from the business of the plaintiff transacted in the state of California. The rate is fixed and the tax authorized by section 14, article 13, of the constitution of California, amended in 1910, and statutes passed in pursuance
91 thereof. Approximately fifty per cent of the gross revenue of the plaintiff corporation in California consists of returns from the interstate business of the plaintiff corporation. The amount of the California revenue derived from interstate business is ascertained by apportioning to the business in the state of California the proportion of the fare derived from each item of the business of the plaintiff, into, out of and through the state of California, which the mileage traveled by the passenger in California bears to the total mileage traveled by him upon his ticket, and by adding these several amounts to ascertain the total amount of gross receipts for the year for such business. These amounts were furnished to the state board of equalization, and are as follows:

Year.	Intrastate business.	Interstate business.	Total business.	Rate.	Total tax.	Amount plaintiff seeks to recover.
1912..	$938,786.80	$966,516.17	$1,905,302.97	3%	$57,159.08	$28,995.48
1913..	1,000,963.16	953,036.44	1,953,999.60	3%	58,619.98	28,591.09
1914..	1,124,877.77	956,213.61	2,081,091.38	4%	83,243.66	38,248.55
1915..	1,190,719.76	1,004,681.57	2,201,401.33	4%	88,056.06	40,187.26
1916..	998,330.30	855,072.22	1,853,402.52	4%	73,209.40	33,811.67
1917..	1,053,141.34	1,025,743.33	2,078,884.67	4%	82,115.94	40,516.86
1918..	1,214,463.33	1,182,424.90	2,396,888.23	4%	94,677.08	46,705.78

In considering the effect of this method of apportionment of the passenger fares derived from interstate business, it should be observed in passing that, if the rates of the plaintiff corporation for long interstate hauls are less proportionately per mile than for shorter hauls in intrastate business, it follows that if two passengers proceed from San Francisco to the state line at Yuma, one going to New York or Boston by the way of New Orleans and the other stopping

at the state line, the amount of fare apportioned to the state of California would be less in the case of the traveler who is going to Boston or New York than in the case of the one who stops at the state line. If the state is entitled to levy a tax in the manner adopted, this would seem to be the fairest method of apportioning the receipts of an interstate common carrier. If the same system was adopted in all the states traversed by the carrier, the sum of the amounts thus apportioned to the several states would be equal to the gross receipts of the carrier derived from such interstate commerce.

Appellant's contention is that a tax upon the gross receipts derived from interstate commerce is in violation of the federal constitution giving congress the power to regulate interstate commerce, and for that reason seeks to recover the proportion of the tax which is based upon the gross receipts derived from interstate commerce.

It is apparently conceded by the appellant that the gross receipts of a common carrier engaged in interstate commerce can be considered as a basis in a bona fide effort to determine the value of the carrier's property within the state, and that if the value so derived from the consideration of these gross receipts from interstate commerce and from intrastate commerce is the fair valuation of the property within the state subject to taxation that the tax is valid. If not so conceded it is clear that such a tax is valid (Wisconsin and Michigan Ry. Co. v. Powers, 191 U. S. 379).

The section of the California constitution authorizing and levying the tax declares that it is a property tax in lieu of all other taxes, state, county and municipal, and if this declaration is a true statement of the fact, it is undoubtedly true that the method is unobjectionable. The constitution, after enumerating the various
92 companies which are required to pay the tax levied under its provision, requires that they "(*a*) * * * shall annually pay to the state a tax upon their franchises, roadways, roadbeds, rails, rolling stock, poles, wires, pipes, canals, conduits, rights of way and other property, or any part thereof used exclusively in the operation of their business in this state, computed as follows: Said tax shall be equal to the percentages hereinafter fixed upon the gross receipts from operation of such companies and each thereof within this state. * * * Such taxes shall be in lieu of all other taxes and licenses, state, county and municipal, upon the property above enumerated of such companies except as otherwise in this section provided. * * * All property enumerated in subdivision *a* (supra), *b* and *d* of this section shall be subject to taxation, in the manner provided by law, to pay the principal and interest of any bonded indebtedness created and outstanding by any city, city and county, county, town, township or district, before the adoption of this section. The taxes so paid for principal and interest on such bonded indebtedness shall be deducted from the total amount paid in taxes for state purposes." * * *

[1] The question as to whether or not the taxes levied by section 14, article XIII of the constitution are taxes upon property rather than upon receipts or income has several times been considered by

this court and in each instance it has been declared to be essentially a property tax.

The opinion in City and County of San Francisco v. The Pacific Telephone and Telegraph Company, 166 Cal. 244, gives a history of the enactment of section 14, article XIII of the constitution to which we refer without repeating the same herein. With reference to the nature of the tax it was therein stated:

"The appellant's contention, briefly stated, is that the constitutional provision relieves the companies named from no burden except that of taxes upon the property theretofore enumerated, and that the charge imposed by the ordinance is a business or occupation tax, and not a tax upon property at all, and therefore not covered by the so-called exemption. The respondent, on the other hand, claims that under a fair reading of the constitutional amendment, the liability of a telephone company to pay a percentage of its gross receipts was designed to exclude the power of the state, or of any county or municipality, to exact from it any further revenue (except as stated in the proviso above quoted) whether by way of a direct tax upon its property or in the guise of a license fee upon its business. * * *

"The percentages enumerated in the amendment are declared to be 'in lieu of all other taxes,' etc., and such percentages were, doubtless, fixed at higher rates than would have been adopted in the absence of a restriction on other taxation. These considerations are of weight in determining the rule of interpretation by which the provision regarding freedom from other taxation is to be read. * * *

"For these reasons we agree with the conclusion of the learned trial judge that the taxes imposed by the amendment supersede, not only other taxes upon property, but also license fees like those exacted by the ordinance of the city and county. This result, it seems to us, not only accords with the language of the part of the amendment defining the tax, but is in harmony with the apparent purpose and scope of the new system of taxation created by the amendment."

In the opinion in the case of Lake Tahoe Ry. etc. Co. v. Roberts, 168 Cal. 551, it is said: "The fact that these manifest contingencies have not been provided for by law is additional evidence that the framers of the constitution meant what they said, namely: that *only property* used exclusively, or only a severable part of property used exclusively in the operation of the business of the company,
93 should be included in the *list of property whose sole and only tax is covered by the gross revenue percentage,* and that the earnings of other properties not so exclusively used in whole or in part are not an element in the admeasurement of this tax." (Italics ours.)

In the opinion in Pacific Gas & Electric Co. v. Roberts, 168 Cal. 420, additional history of the constitutional amendment is set out on page 423 to which we refer and the decisions of the Supreme Court of the United States on this subject are thus summarized:

"Without pausing here to review the decisions of the supreme court bearing upon the question, but contenting ourselves with a subsequent reference to some of them, it may be said that the conclusions of the supreme court were that property used in the public service frequently acquired a value in the use, which value was something greater than the value of the property not engaged in such use; that by the systemization and unification of such properties in use they in the aggregate acquired a special value by virtue of this unity of use; that this special value was in the nature of property; that a fair tax upon gross earnings bore such a relation to the values of these properties under their unity of use as to justify such a tax upon revenue as being a legal and commutated or substituted tax for other taxes which were or might have been levied. (Maine v. Grand Trunk Ry., 142 U. S. 217 [35 L. Ed. 994, 12 Sup. Ct. Rep. 121]; Cleveland & St. Louis Ry. Co. v. Backus, 154 U. S. 439, [38 L. Ed. 1041, 14 Sup. Ct. Rep. 1122]; Erie Ry. v. Pennsylvania, 158 U. S. 440, [39 L. Ed. 1046, 15 Sup. Ct. Rep. 900]; Adams Express Co. v. Ohio, 165 U. S. 194, [41 L. Ed. 683, 17 Sup. Ct. Rep. 305]; United States Express Co. v. Minnesota, 223 U. S. 335, [56 L. Ed. 459, 32 Sup. Ct. Rep. 211].)

"So much for the justness and reasonableness and legality of the new method." * * *

While we have not heretofore considered the proposition from the standpoint of its relation to interstate commerce, it is clear from the foregoing that this court has always considered the tax to be in fact what it purports to be, namely, a tax upon the property of the company as it is described in the constitution and with more particularity in the assessment by the state board of equalization.

The validity of such a tax from the standpoint of the interstate commerce clause of the federal constitution, as interpreted by the Supreme Court of the United States, received careful consideration from the commissioners, who were appointed to formulate and report upon the proposed system of taxation. Before the appoint of these commissioners, in pursuance of an act of the legislature authorizing such a body to be formed, the Supreme Court of the United States in a number of cases had considered whether or not certain forms of state legislation authorizing the taxation of interstate commerce transportation companies was a valid exercise of the power of the state. The reports of the commission show that these cases were considered by them in formulating their plan of taxation and that an effort was made to conform to the then latest expression of the Supreme Court of the United States upon the subject. A quotation from Wisconsin and Michigan Ry. Co. v. Powers, 191 U. S. 379, supra, decided in 1903, will indicate the principle upon which the tax commission relied in the drafting of the constitutional amendment, which was afterwards submitted to the state legislature and by the legislature submitted to the people for adoption. The court was considering the validity of a statute of Michigan levying a specific tax upon the property and business of every railroad corporation operated in the state. That statute provided that "when the railroad

lies partly within and partly without this state, prima facie,
94 the gross income of said company from such road for the purposes of taxation shall be on the actual earnings of the road in Michigan, computed by adding to the income derived from the business transacted by said company entirely within this state, such proportion of the income of said company arising from the interstate business as the length of the road over which said interstate business is carried in this state bears to the entire length of the road over which said interstate business is carried."

The court in disposing of the contention that the statute was an invalid interference with interstate commerce said:

"We need say but a word in answer to the suggestion that the tax is an unconstitutional interference with interstate commerce. In form the tax is a tax on 'the property and business of such railroad corporation operated within the state,' computed upon certain percentages of gross income. The prima facie measure of the plaintiff's gross income is substantially that which was approved in Maine v. Grand Trunk Railway Co., 142 U. S. 217, 228. See, also, Western Union Telegraph Co. v. Taggart, 163 U. S. 1. Decree affirmed."

A decision (Galveston, Harrisburg etc. Ry. Co. v. Texas, 210 U. S. 217), rendered later (1907) was also available before the legislature or the people finally acted upon the proposed plan of taxation. In that case it was said: "So it has been held that a tax on the property and business of a railroad operated within the state might be estimated prima facie by gross income, computed by adding to the income derived from business within the state the proportion of interstate business equal to the proportion between the road over which the business was carried within the state to the total length of the road over which it was carried. (Wisconsin and Michigan Ry. Co. v. Powers, 191 U. S. 379.)"

Of course, the fact that the constitutional provision assailed by the appellant purports to levy a tax upon the property and to consider the gross receipts solely as a basis for the valuation thereof, is not necessarily determinative of the question, however persuasive and definite such a declaration may be.

The question as to whether or not a particular taxing law violates the federal constitution depends upon the practical operation and the effect of the tax imposed and not upon the definitions or declarations of the state authorities. The rule is thus stated in the recent case of Shaffer v. Carter, 252 U. S. 37:

"For, where the question is whether a state taxing law contravenes rights secured by that instrument, the decision must depend not upon any mere question of form, construction, or definition, but upon the practical operation and effect of the tax imposed. (St. Louis Southwestern Ry. Co. v. Arkansas, 235 U. S. 350, 362; Mountain Timber Co. v. Washington, 243 U. S. 219, 237; Crew Levick Co. v. Pennsylvania, 245 U. S. 292, 294; American Mfg. Co. v. St. Louis, 250 U. S. 459, 463.) The practical burden of a tax imposed upon the net income derived by a non-resident from a

business carried on within the state certainly is no greater than that of a tax upon the conduct of the business, and this the state has the lawful power to impose, as we have seen."

To the same effect is the case of American Mfg. Co. v. St. Louis, supra, where it is said: "As a matter of construction, this, upon familiar principles, is conclusive upon us. But, as has been held very often, the question whether a state law or a tax imposed thereunder deprives a party of rights secured by the federal constitution depends not upon the form of the act, nor upon how it is construed or characterized by the state court, but upon its practical operation and effect. (St. Louis Southwestern Ry. Co. v. Arkansas,
95 235 U. S. 350, 362; Mountain Timber Co. v. Washington, 243 U. S. 219, 237; Crew Levick Co. v. Pennsylvania, 245 U. S. 292, 294.)"

Before considering the effect of our new constitutional scheme of taxation upon interstate commerce, we cite some of the decisions of the Supreme Court of the United States on the subject, rendered since the system was adopted by this state. The decision of that court in Union Tank Line Co. v. Wright, 249 U. S. 275, dealt with a statute of Georgia wherein that state had provided for the levying of a tax upon the interstate commerce of the Union Tank Line Co., based upon the proportion that the miles in Georgia over which the cars of that company moved bore to the total miles so traversed in all the states. It is to be observed that the plan did not consider "cars mileage," or "ton mileage," or "receipts," or "revenue," either gross or net, for such haulage, as is pointed out in the opinion holding the tax invalid, from which we quote as follows:

"A state may not tax property belonging to a foreign corporation which has never come within its borders—to do so under any formula would violate the due process clause of the Fourteenth Amendment. In so far, however, as movables are regularly and habitually used and employed therein, they may be taxed by the state according to their fair value along with other property subject to its jurisdiction, although devoted to interstate commerce. While the valuation must be just it need not be limited to mere worth of the articles considered separately but may include as well 'the intangible value due to what we have called the organic relation of the property in the state to the whole system.' How to appraise them fairly when the tangibles constitute part of a going concern operating in many states often presents grave difficulties; and absolute accuracy is generally impossible. We have accordingly sustained methods of appraisement producing results approximately correct—for example, the mileage basis in case of a telegraph company (Western Union Telegraph Co. v. Massachusetts), and the average amount of property habitually brought in and carried out by a car company (American Refrigerator Transit Co. v. Hall). But if the plan pursued is arbitrary and the consequent valuation grossly excessive it must be condemned because of conflict with the commerce clause or the Fourteenth Amendment or both. (Western Union Telegraph Co. v. Massachusetts, 125 U. S. 530; Marye v. Baltimore & Ohio R. R.

Co., 127 U. S. 117; Pullman's Palace Car Co. v. Pennsylvania, 141 U. S. 18, 26; Adams Express Co. v. Ohio, 165 U. S. 194; s. c., 166 U. S. 185; American Refrigerator Transit Co. v. Hall, 174 U. S. 70; Union Refrigerator Transit Co. v. Lynch, 177 U. S. 149; Fargo v. Hart, 193 U. S. 490; Cudahy Packing Co. v. Minnesota, 246 U. S. 450, 453.)

"In the present case the comptroller general made no effort to assess according to real value or otherwise than upon the ratio which miles of railroad in Georgia over which the cars moved bore to total mileage so traversed in all states. Real values—the essential aim—of property within a state cannot be ascertained with even approximate accuracy by such process; the rule adopted has no necessary relation thereto. *During a year two or three cars might pass over every mile of railroad in one state while hundreds constantly employed in another moved over lines of less total length.* Fifty-seven was the average number of cars within Georgia during 1913 and each had a 'true' value of $830. Thus the total there subject to taxation amounted to *$47,310*—the challenged assessment specified *$291,196*. * * *

"Pullman's Palace Car Co. v. Pennsylvania, supra, relied on by defendant in error, contains the following passage which seems to uphold the Georgia rule—"The mode which the State of Pennsylvania adopted, to ascertain the proportion of the company's property upon which it should be taxed in that state, was by taking as
96 a basis of assessment such proportion of the capital stock of the company as the number of miles over which it ran cars within the state bore to the whole number of miles, in that and other states, over which its cars were run. This was a just and equitable method of assessment; and, if it were adopted by all the states through which these cars ran, the company would be assessed upon the whole value of its capital stock, and no more.' But the point therein spoken of was unnecessary to determination of the cause; and so far as the quoted passage sanctions the specified rule for ascertaining values as generally appropriate, just, unobjectionable and productive of conclusive results, it must be regarded as obiter dictum, and we cannot now approve or follow it." (Italics ours.)

It is worthy of note that three members of the Supreme Court considered that even this method of assessment was a valid exercise of the state taxing power as theretofore determined by the Supreme Court. The opinion of the minority is thus stated by Mr. Justice Pitney, Mr. Justice Brandeis and Mr. Justice Clarke concurring:

"The supreme court of Georgia sustained the tax on the authority of numerous decisions of this court, cited for the purpose. (143 Georgia, 765; 146 Georgia, 489.) This court reverses the judgment, and holds the taxing law unconstitutional, upon reasoning to which I am unable to yield assent.

"In my opinion the Georgia system of taxing movable property of this character when habitually employed in the state, and the decision of the state supreme court sustaining the particular taxes in question, are based upon a correct view of the powers of the state

under the federal constitution, and are in entire harmony with principles laid down in authoritative decisions of this court which have remained unchallenged for more than a quarter of a century. (Western Union Telegraph Co. v. Massachusetts, 125 U. S. 530, 552; Marye v. Baltimore & Ohio R. R. Co., 127 U. S. 117, 123; Pullman's Palace Car Co. v. Pennsylvania, 141 U. S. 18, 22, 26, et seq.; Cleveland etc. Ry. Co. v. Backus, 154 U. S. 439, 445; Western Union Telegraph Co. v. Taggart, 163 U. S. 1, 14; Adams Express Co. v. Ohio, 165 U. S. 194, 221; s. c. 166 U. S. 185; American Refrigerator Transit Co. v. Hall, 174 U. S. 70, 75, et seq.; Union Refrigerator Transit Co. v. Lynch, 177 U. S. 149, 152; Cudahy Packing Co. v. Minnesota, 246 U. S. 450, 453.)"

The appellant relies very strongly upon a recent decision of that court, Galveston, Harrisburg, etc. Ry. Co. v. Texas, 210 U. S. 217, in which a tax of 1% of their gross receipts is levied upon all railroads operating in the state. The tax was held invalid. As we understand the main opinion in that case, the court concluded that the Texas statute taxed all revenue of such interstate commerce carrier actually received within the state without regard to the proportion earned in the state, although in some cases the larger part of their gross receipts is derived from the carriage of passengers and freight coming from, or destined to, other points without the state. The tax was regarded by the majority of that court as a tax upon the gross receipts derived from interstate commerce, and in addition to ad valoreum taxes upon a valuation of their property "taken as a going concern". The minority of the court, Mr. Justice Harlan, Mr. Chief Justice Fuller, Mr. Justice White and Mr. Justice McKenna held that the tax should be sustained as an occupation tax, levied by the state law as interpreted by the supreme court of Texas as applicable only to the proportion of the interstate commerce gross receipts, apportioned to the mileage traveled thereby in Texas, in proportion to the total mileage traveled. The main opinion recognizes and is based upon the principles of such taxation theretofore established, and relied upon by the people of this state in adopting the new method of taxation, as will be apparent from the following quotation therefrom: "It being once admitted, as of course it must be, that not every law that affects commerce among the states is a regulation of it in a
97 constitutional sense, nice distinctions are to be expected. Regulation and commerce among the states both are practical rather than technical conceptions, and, naturally, their limits must be fixed by practical lines. As the property of companies engaged in such commerce may be taxed (Pullman's Palace Car Co. v. Pennsylvania, 141 U. S. 18), and may be taxed at its value as it is, in its organic relations, and not merely as a congeries of unrelated items, taxes on such property have been sustained that took account of the augmentation of value from the commerce in which it was engaged. (Adams Express Co. v. Ohio State Auditor, 165 U. S. 194; s. c. 166 U. S. 171; Fargo v. Hart, 193 U. S. 490, 499.) So it has been held that a tax on the property and business of a railroad operated within the state might be estimated prima facie by gross income, com-

puted by adding to the income derived from business within the state the proportion of interstate business equal to the proportion between the road over which the business was carried within the state to the total length of the road over which it was carried. (Wisconsin & Michigan Ry. Co. v. Powers, 191 U. S. 379.)

"Since the commercial value of property consists in the expectation of income from it, and since taxes ultimately, at least in the long run, come out of income, obviously taxes called taxes on property and those called taxes on income or receipts tend to run into each other somewhat as fair value and anticipated profits run into each other in the law of damages. The difficulty of distinguishing them became greater when it was decided, not without much debate and difference of opinion, that interstate carriers' property might be taxed as a going concern. In Wisconsin & Michigan Ry. Co. v. Powers, supra, the measure of property by income purported only to be prima facie valid. But the extreme case came earlier. In Maine v. Grand Trunk Ry. Co., 142 U. S. 217, 'an annual excise tax for the privilege of exercising its franchise', was levied upon every one operating a railroad in the state, fixed by percentages, varying up to a certain limit, upon the average gross receipts per mile multiplied by the number of miles within the state when the road extended outside. This seems at first sight like a reaction from the Philadelphia & Southern Mail Steamship Company case. But it may not have been. The estimated gross receipts per mile may be said to have been made a measure of the value of the property per mile. That the effort of the state was to reach that value and not to fasten on the receipts from transportation as such was shown by the fact that the scheme of the statute was to establish a system. The buildings of the railroad and its lands and fixtures outside of its right of way were to be taxed locally, as other property was taxed, and this excise with the local tax were to be in lieu of all taxes. The language shows that the local tax was not expected to include the additional value gained by the property being part of a going concern. That idea came in later. The excise was an attempt to reach that additional value. The two taxes together fairly may be called a communutation tax. (See Ficklen v. Taxing District of Shelby County, 145 U. S. 1, 23; Postal Telegraph Cable Co. v. Adams, 155 U. S. 688, 697; McHenry v. Alford, 168 U. S. 651, 670, 671.)

"'By whatever name the exaction may be called, if it amounts to no more than the ordinary tax upon property or a just equivalent therefor, ascertained by reference thereto, it is not open to attack as inconsistent with the constitution.' (Postal Telegraph Cable v. Adams, 155 U. S. 688, 697. See New York, Lake Erie & Western R. R. Co. v. Pennsylvania, 158 U. S. 431, 438, 439.) The question is whether this is such a tax. It appears sufficiently, perhaps from what has been said, that we are to look for a practical rather than a logical or philosophical distinction. The state must be allowed to tax the property and to tax it at its actual value as a going concern.

98 On the other hand the state cannot tax the interstate business. The two necessities hardly admit of an absolute logical reconciliation. Yet the distinction is not without sense.

When a legislature is trying simply to value property, it is less likely to attempt to or effect injurious regulation than when it is aiming directly at the receipts from interstate commerce. A practical line can be drawn by taking the whole scheme of taxation into account. That must be done by this court as best it can. Neither the state courts nor the legislatures, by giving the tax a particular name or by the use of some form of words, can take away our duty to consider its nature and effect. If it bears upon commerce among the states so directly as to amount to a regulation in a relatively immediate way, it will not be saved by name or form. (Stockard v. Morgan, 185 U. S., 27, 37; Asbell v. Kansas, 209 U. S. 251, 254, 256.)"

That the Texas case just quoted is not decisive of the case at bar is made apparent by a later decision of the Supreme Court of the United States much relied upon by respondent, wherein a law of Minnesota is sustained, requiring car loaning companies to pay a tax upon their gross earnings within the state, in lieu of other taxes on the property. The matter is discussed as follows in the opinion (Cudahy Packing Co. v. Minnesota, 246 U. S. 450-452):

"As construed and applied by the state court, the Minnesota law requires a freight line company, meaning a company furnishing or leasing cars to railroads for freight transportation, to report annually its gross earnings from the operation of its car line within the state and to pay, in lieu of other taxes on the property so employed, a tax fixed at a stated per cent of such earnings. That court holds that this law is an exertion of the power of the state to tax the property within its limits from which the earnings are derived and is intended to embody a practical method of reaching and valuing that property, tangible, and intangible, for taxing purposes.

"In so far as the property constituting this car line is regularly or habitually used or employed in Minnesota it is within the taxing power of the state, although chiefly devoted or applied to interstate transportation. (Pullman's Car Co. v. Pennsylvania, 141 U. S. 18; Adams Express Co. v. Ohio, 165 U. S. 194; s. c. 166 U. S. 185; American Refrigerator Co. v. Hall, 174 U. S. 70; Union Refrigerator Co. v. Lynch, 177 U. S. 149.) This is not questioned; but it is insisted that the tax imposed is not a property tax but one laid directly on the gross earnings. *Of course, if it is laid on the earnings as such, they being derived largely from interstate commerce, it is an unconstitutional restraint or burden on such commerce and void.* (Italics ours.) Fargo v. Michigan, 121 U. S. 230; Philadelphia & Southern Steamship Co. v. Pennsylvania, 122 U. S. 326; Galveston, Harrisburg & San Antonio Ry. Co. v. Texas, 210 U. S. 217.) On the other hand, if what is done is to reach the property and not to tax the gross earnings, the latter being taken merely as an index or measure of the value of the former, it well may be that the objection urged against the tax is untenable; for, as this court has said, 'by whatever name the tax or taxes may be called that are fixed by reference to the value of the property, if they are not imposed because of its use in interstate or foreign commerce, and if they amount to no more than would be legitimate as an ordinary

tax upon the property, valued with reference to the use in which it is employed, they are not open to attack' as restraining or burdening such commerce. (St. Louis Southwestern Ry. Co. v. Arkansas, 235 U. S. 350, 367; Postal Telegraph Co. v. Adams, 155 U. S. 688; Wisconsin & Michigan Ry. Co. v. Powers, 191 U. S. 379, 387; Fargo v. Hart, 193 U. S. 490, 499; Galveston, Harrisburg & San Antonio Ry. Co. v. Texas, supra.)

"As before stated, the state court regards the tax as imposed
99 in respect of the property rather than the earnings, and the same view seems to be taken by the legislature, for the Act of 1909 speaks of the tax as 'a tax upon its [the company's] property' and the Act of 1911 says 'the value of such property [that used within the state] for purposes of taxation is to be determined' by reference to the gross earnings from the mileage within the state. True, this local view is not conclusive on this court, but it cannot be rejected unless it can be said to be ill founded. * * *

"The other case [United States Express Co. v. Minnesota, 223 U. S. 335] involved a tax in Minnesota of a designated per cent of the gross earnings of an express company from business done in that state, the business being partly local and partly interstate commerce. The statute declared that the tax was to be in lieu of other taxes on the company's property, and the state court held that it was not in reality a tax on the gross earnings, but was a tax on the property, the earnings being taken merely as a measure of the value of the property for taxing purposes. We accepted and gave effect to that holding, not as being conclusive on us, but on the grounds that the property from which the earnings were derived was not to be otherwise taxed, that the tax was part of a system intended to reach the full value of the company's property in the state as reflected by the gross earnings, and that the amount of the tax did not appear to be in excess of what would be legitimate as an ordinary tax on the property, valued with reference to its use as part of a going concern. The case dealing with the Oklahoma tax [Meyer v. Wells Fargo & Co., 223 U. S. 298] was distinguished by pointing out that that tax could not be regarded as a property tax, because it was to be in addition to another tax reaching the full value of the company's property in the state.

"The law imposing the present tax is closely patterned after the one exacting the tax upheld in United States Express Co. v. Minnesota, and contains the same declaration that the tax shall be lieu of other taxes on the property. The statutes differ only in minor details and are both parts of a general system which the state applies to railroads, telephone lines and the like. So, unless this tax be otherwise distinguishable, it must, under the decision in that case, be regarded as a property tax and not as laid on the gross earnings."

The decision in this case is clear authority for the system of taxation incorporated in our constitution, and "the local view" concerning the same embodied in that constitution, and the statutes and court decisions defining its purpose and scope.

In a still later case the system adopted by California was appar-

ently applied by the state authorities of Nevada, and sustained by the Supreme Court of the United States. (State v. Wells Fargo & Co., 38 Nev. 505, 540; Wells Fargo & Co. v. Nevada, 248 U. S. 165.) The valuation of $850,000 was sustained as a reasonable valuation, regardless of the method used in ascertaining its value. A valuation of $300 per mile was placed upon the business of the express company. This involved a capitalization of $850,000, which was taken as the value for taxation. In connection with this valuation the supreme court of Nevada made the following statement: "Whether the system of determining the valuation of appellant's property, applied by the state board of assessors, was correct or not, it does not appear that it operated to impose an excessive valuation. The fact that erroneous methods may in good faith have been used to determine valuations is immaterial, we think, if an excessive valuation did not result therefrom." The Supreme Court of the United States affirmed the decision of the Nevada court (Wells, Fargo & Co. v. Nevada, 248 U. S. 165), stating: "As construed by the state court, the statute under which the tax was imposed does not provide for a privilege or franchise tax, but only for an ad valorem
100 property tax. Acting under the statute, a state board valued the company's personal property, tangible and intangible, used in its express business within the state, at $300 per mile of line; * * * the assessor of Humboldt county * * * inaccurately described the property as consisting of the right to carry on express business there.

"Looking only at that entry there is strong ground for saying that the tax was laid on the privilege or act of doing an express business which was principally interstate. On the other hand, the action of the state board, on which the assessment concededly was predicated, indicates that what was taxed was the company's property in Humboldt county. The difference is vital, for, consistently with the commerce clause of the federal constitution, the state could not tax the privilege or act of engaging in interstate commerce, but could tax the company's property within the state, although chiefly employed in such commerce. (Adams Express Co. v. Ohio, 165 U. S. 194, 220; s. c. 166 U. S. 185, 218; Galveston, Harrisburg & San Antonio Ry. Co. v. Texas, 210 U. S. 217, 225-227; Cudahy Packing Co. v. Minnesota, 246 U. S. 450, 453.)

"The company insists that the state is concluded by the entry on the assessment roll. But the state court, as shown in its opinion, rejects that view and holds, in effect, that the entry must be construed in the light of the statute and the action of the state board, and that when this is done it is apparent that the tax was not laid on the privilege or act of engaging in interstate commerce, but on the company's property, within the county. We perceive no ground for disturbing that ruling. In so far as it turns on the authority of the state board and the assessor under the statute and the relative effect to be given to their acts it is not reviewable here, and in so far as it relates to what really was the subject of the tax we think it was right. (See Cudahy Packing Co. v. Minnesota, supra, p. 454.) Evidently the company at one time took this view of the tax, for in an amend-

ment to its answer we find an allegation that the state board 'valued the property used by this defendant at the rate or sum of $300 for every mile of railroad over which this defendant transacted business, and apportioned said assessment or tax to the various counties of the state in accordance with the number of miles of such railroads, so situated within said county, and that the tax herein sued for was not otherwise levied or assessed.' * * *

"It also is asserted that the state board in valuing the property acted on inaccurate data and applied erroneous standards which resulted in a valuation so excessive as to make the tax a burden on interstate commerce. It is true that some inaccurate data and some computations following erroneous standards were presented to the board by a state officer in support of a suggestion that the property be valued at $500 or more per mile of line. But the suggestion was not adopted, and it is not shown that the board's valuation was based on the data and computations so presented. Besides, if the valuation was excessive, the company was entitled in the present suit to show the true value and to have the tax reduced accordingly. (Rev. Laws, 1912, sec. 3664.) An attempt at such a showing was made, but the state court concluded therefrom that a valuation of $300 per mile, as fixed by the board, was not excessive. It may be that the showing was not complete, but, even if so, it was the company's showing and was all that was before the court. After examining it we think it discloses no ground for condemning the tax as a burden on interstate commerce."

[2] It follows from the foregoing decisions that it is proper to consider, as a basis on which to establish the value of plaintiff's property in this state, the earnings derived from its property, tangible and intangible, within the state; and that it is proper to consider the proportion of its receipts derived from its interstate business, earned within the state as an element of that basis [3] It is also
101 clear that the system adopted by our state constitution for such apportionment of interstate earnings is the fairest possible method of such apportionment and that by such method, the state does not assert jurisdiction over any earnings from the interstate business, not actually derived from that portion of such business actually conducted within the state, and does not draw to itself earnings derived from capital or property elsewhere situated. In short, that the method adopted for the ascertainment of local values is wholly unobjectionable.

The appellant advances one other argument in support of its contention that the constitutional system of taxation is in reality a tax upon the gross revenues derived in part from interstate commerce and not a tax upon the appellant's property. The contention may best be stated in the words of the appellant: "The facts regarding what was done refute completely the claim set up by the defendant in his answer and found by the court that the property was taxed at all. It was the gross receipts and gross receipts only." The claim is that the reports of the state board of equalization and assessment by them of appellant's property make manifest that the tax in question is not a property tax. For the purpose of considering appellant's conten-

tion it will be necessary to consider the method of fixing the rate or percentage of gross receipts (3% and later 4%) used in determining the tax.

Before the new scheme was recommended hearings were had before this commission and all transportation companies, including plaintiff, doing business in this state, were given an opportunity to present their views and their data upon the subject. It is, perhaps, worthy of note that the report of the commission shows that the plaintiff then stated that it was unable to comply with the request of the commission for information as to the proportion of its interstate business conducted in California and contented itself with a protest against any form of taxation which operated to place a burden upon its interstate commerce.

The tax commission in its report of 1906 to the legislature furnished the proper rate of taxation based on the gross receipts in order to properly tax the property of the various corporations involved in the amendment, as follows, to-wit:

"In view of the strength of the popular feeling that taxes should be 'equal' and of the obvious and essential justice of such a demand, it is highly important to discover a practical method for determining whether the burden of a tax which it is proposed to impose upon the gross earnings of a given class of corporations is the equivalent or not of a tax which might be levied under an ad valorem plan. Such a method has been devised by this commission. By the application of this method we can ascertain what rate of tax on the gross earnings is the equivalent of a given tax rate on the property, and vice versa. This will make it possible to compare any proposed gross earnings tax with an assumed 'fair' rate on property.

"Briefly stated that method is: To determine what tax rate on gross earnings is the equivalent of a given rate on the property, for a given class of public-service corporations, (1) ascertain what percentage of the gross earnings is net, (2) ascertain what rate of interest would constitute a fair return to investors in the securities of the class of public-service corporations under consideration, then (3) divide the percentage of net earnings by the rate of interest and multiply the result by the given tax rate on property.* This method is not as rigid or as infallible as the mathematical statement of it might seem to imply. There is still room for difference of opinion. But it has been found of great practical value in testing the probable effect of different rates on any set of assumptions. * * *

102 "In order to compute what rate of taxation on gross earnings is the equivalent of a given rate of taxation on the property, we have simply to divide the percentage of net earnings by the assumed rate of capitalization and multiply the result by whatever tax rate on the property we wish to compare the gross earnings rate with. Thus, for example, if we wish to impose, in the form of a gross earn-

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"*Expressed algebraically, let t equal the tax rate sought, n equal the percentage of net earnings to gross, i equal the interest rate on the investment, and r equal the given tax rate on property; then: $t = \frac{n}{i} \times r$." . . .

ings tax, a burden which shall be the equivalent of a tax of 1½% on the property, then in the case of a railroad, taking the figures assessed above, we divide 36 by 6 or 8, whichever shall be determined upon as a fair rate at which to capitalize railroad earnings, and multiply the result by 1½, obtaining, at 6%, 9% as an equivalent rate on gross earnings, or at 8% as a basis of capitalization, 6¾%. If the tax rate on property or capital were fixed at 1%, the above rates would become 6% and 4½%."

The commission of 1906 also shows in its report the close approximation between the value of railroad property as theretofore assessed by the state board of equalization for taxation purposes, and the value to be ascertained by the proposed system. That portion of the report is as follows:

"The question of the equity of the gross earnings tax as between different roads can be tested somewhat roughly by comparing the taxes now paid on the ad valorem plan with the taxes that would be paid on the gross earnings plan. This is done in the following table for the more important railroad systems of the state. It is not argued that the present system is equitable as between the different roads, but it affords the easiest and most readily available basis of comparison:

	Tax on property, present system, 1904.	Per cent of all taxes on railroads.	Tax on gross earnings at 4 per cent, proposed system.	Per cent of all taxes on railroads.	Column 3 reduced to same total as column 1.
Southern Pacific System	$1,349,425	75.85	$1,508,958	74.17	$1,319,484.30
Santa Fe System	306,372	17.22	375,109	18.44	328,047.60
California Northwestern and North Shore	62,612	3.52	82,027	4.03	71,693.70
Nevada-California-Oregon and Sierra Valleys	4,666	.262	7,661	.37	6,582.30
Salt Lake Road	27,237	1.530	24,423	1.205	21,436.95
Nevada County Narrow Gauge	3,397	.191	5,125	.252	4,483.08
Pacific Coast	6,959	.391	5,806	.285	5,070.15
Pajaro Valley Consolidated	2,881	.161	2,535	.124	2,205.96
Sierra Railway	8,424	.472	14,657	.721	12,826.59
Boca and Loyalton	5,501	.308	6,936	.341	6,066.39
Lake Tahoe	1,700	.095	1,265	.062	1,102.98
	*$1,779,174	100.00	$2,034,502	100.00	$1,779,000.00

*Includes state, county, city and district taxes.

103 "In the case of the larger roads the change of system would not materially alter their proportion of the total taxes on railroads. But in the case of some of the smaller roads the changes would be quite important."

The similarity of values derived by the assessment of individual items of property, and by adding such items and thus ascertaining the total value, and the system inaugurated by the constitution, can be determined by a comparison of the assessment of plaintiff's properties by the two methods for the same years. The use of the two methods of valuation resulted from the adoption of a constitutional amendment in 1910 requiring a tax to be levied upon all the property of the state for the Panama-Pacific Exposition.

While the discrepancies between these two valuations is pointed out by the plaintiff as an evidence of the inequality and excess of the percentage tax, the analysis of the figures by the attorney-general shows that the valuations of the plaintiff's property, ascertained by the two methods, were practically identical. In considering these figures, however, it is important to bear in mind that while the law directs that all property shall be assessed at its full cash value, as a matter of fact experience has shown that the assessed value is less than 50% of the actual value, or, to be more accurate, and use the figures of the state board of equalization in 1911, 1912, 1913 and 1914, the assessed value was 45.1% of the actual value; in 1915, 41.991%; 1916, 42.755%.

If the state board of equalization had certified to the county assessors the true valuation of plaintiff's property instead of the percentage of its value based upon the system of assessment adopted by the county assessors, the plaintiff's property would have borne an excessive proportion of the tax. As stated by the Supreme Court of the United States in Sunday Lake Iron Company v. Township of Wakefield, 247 U. S. 350, "it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property". This court has recognized such rule and has permitted a recovery of taxes levied upon such valuation. (Los Angeles Gas and Electric Co. v. County of Los Angeles, 162 Cal. 164; Southern Pacific Land Co. v. County of San Diego, 191 Pac. 931.)

In making the comparisons of values another fact must also be considered, namely, that the gross revenue method includes all operative property (Const. Cal., art. XIII, sec. 14), while the property valuation, by the state board of equalization, for taxation purposes according to the former plan excludes certain operative properties, which are separately assessed by the various local assessors.

For the purpose of comparison we will use the figures furnished by the attorney-general in his brief for plaintiff's property:

Year.	Assessed value.	Percentage of actual value.	Actual value.	Value ascertained from percentage gross receipts.	Under valuation by latter method.
1911.....	$2,995,760	45.1	$6,642,438	$5,020,112	$1,620,000.00
1912.....	3,070,654	45.1	6,808,500	5,148,426.13	660,073.87
1913.....	3,270,246	45.1	7,251,000	7,238,579.13	12,421.13
1914.....	3,459,920	45.1	7,671,600	7,227,781.25	353,819.25
1915.....	2,913,253	42.	6,936,300	6,009,143.88	927,156.22
1916.....	3,548,032	42.75	8,300,000	6,792,000	1,508,000.00

104 To such item of undervaluation must be added the operative properties locally assessed. Expressed in terms of tax the comparison is compiled by the attorney-general from the reports of the state board of equalization, and is shown in the next table.

"Assessment by State Board of Equalization.

Assessment of Pullman Company's cars and franchises by state board of equalization and estimated amount of tax thereon if levied at average tax rate, compared with taxes paid on basis of gross receipts. These figures do not include assessment of valuable operative property assessed by local assessors.

Year.	State board assessment.	Average tax rate.	Ad valorem tax would have been.	Gross receipts tax was.
1911	$2,995,760	[1]$2.53	$75.793	$57,159.08
1912	3,070,654	[2]2.53	77.687	58,619.98
1913	3,270,246	[3]2.55	83.391	83,243.66
1914	3,459,920	[4]2.90	100.338	88,056.06
1915	2,913,253	[5]2.91	84.778	73,209.40
1916	3,548,023	[6]2.824	100.196	82,115.94

The foregoing tables will make it clear that the plaintiff has not been unfairly treated by the state, although it is well to note that the plaintiff in its complaints herein does not raise the issue of overvaluation and makes no allegation of excessive tax as compared with the value of property taxed. The valuations presented in plaintiff's argument were all derived from the work of the officers of the state, and the figures are only relevant as showing that the state system of taxation was based in fact, as well as in name, upon the value of plaintiff's property in the state, and as further illustrating that interstate commerce carriers have not been made to bear an undue proportion of the burden of taxation.

In view of our conclusion on this branch of the case it will be unnecessary to consider or determine the extent to which the taxing

[1] State Board of Equalization special report of 1912.
[2] State Board of Equalization special report of 1912.
[3] State Board of Equalization special report of 1912, revised by special committee of 1915.
[4] Estimated on basis report of Tax Commission of 1915-'17.
[5] Report of Tax Commission, 1915-'17.
[6] Report of Tax Commission, 1915-'17."

power of the state may be exercised in the event that the burden upon the property of interstate commerce carriers is out of all reasonable proportion to that imposed upon the property of others within the state.

We cannot see that the validity of that portion of the act (Stats. 1911, 530, 548, sec. 24), declaring a forfeiture of the right of a foreign corporation to do business in the state if taxes are not paid, is involved in this action to recover taxes already paid.

Judgment affirmed.

WILBUR, *J.*

We concur:
OLNEY, *J.*
SLOANE, *J.*
SHAW, *J.*
ANGELLOTTI, *C. J.*
LENNON, *J.*
LAWLOR, *J.*

105 In the Supreme Court of the State of California.

S. F. No. 9080.

THE PULLMAN COMPANY, a Corporation, Plaintiff and Appellant,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant and Respondent.

Petition for Writ of Error.

The petition of The Pullman Company, a corporation, Plaintifl and Appellant in the above-entitled action, respectfully shows unto your Honor:

That in said action, then pending in the Supreme Court of the State of California, entitled "The Pullman Company, a Corporation, Plaintiff and Appellant, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant and Respondent," a judgment was entered by the said Supreme Court of the State of California therein on the 4th day of April, A. D. 1921, in favor of the said defendant and respondent, and against the said plaintiff and appellant, which said judgment was duly entered in said Court upon the date aforesaid;

That the time within which a petition for a rehearing could be presented and filed in said action has now expired, and said judgment has become final;

That the said Supreme Court of the State of California is the highest Court of said state in which a decision could be had in this action;

That in the records, proceedings, and decision of said Court a manifest error has occurred, greatly to the damage of the said plain-

tiff and appellant, The Pullman Company, a corporation, and
106 said plaintiff and appellant was and is aggrieved thereby;

That, as appears in the records and proceedings in said action, there was drawn into question the power of the State of California, under its laws, to tax the gross receipts received by the said plaintiff and appellant, The Pullman Company, a corporation, for carrying passengers from one state to another, as being a tax on interstate commerce, and a tax upon the receipts from the business of the said The Pullman Company, a corporation, plaintiff and appellant, in carrying passengers from one state to another state, and from business within the State of California to points outside of the State of California, and from points outside of the State of California to points within the said State of California, and from points without the State of California, passing through the State of California, to points outside of the State of California, and in violation of Paragraph 3 of section 8 of Article I of the Constitution of the United States, reading as follows, to-wit:

"The Congress shall have power * * * to regulate commerce * * * among the several states";

and there was also drawn into question the power of the State of California, under its laws, to levy, assess, compute, and collect a tax upon the income of the property and business of the plaintiff and appellant, situated beyond the State of California, as to tax the same was to take the property of the plaintiff and appellant without due process of law, in violation of Section 1 of Article XIV of the Amendments to the Constitution of the United States, reading as follows:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws;"

107 all of which fully appears in the records and proceedings in this action;

Your petitioner, the above named plaintiff and appellant, in and by its complaint filed in said action, contended that the gross receipts arising from the transaction of interstate commerce are not taxable by the State of California; that the taxation thereof constituted an unwarranted and unlawful interference with and burden upon interstate commerce, as well as a deprivation of your petitioner of its property without due process of law, and a denial to your petitioner of an equal protection of the laws, contrary to the provisions of the Constitution of the United States, which contentions, on the part of your petitioner, and each and all thereof, were, in and by the judgment of the Supreme Court of the State of California, hereinbefore referred to, decided against your petitioner;

Wherefore, forasmuch as your petitioner believes that there was manifest error in said decision of said Supreme Court of the State

of California against the several contentions of your petitioner, as hereinbefore set forth, and in the final judgment in said action, which is to the great damage of your petitioner, your petitioner prays that your Honor will examine the records of the Supreme Court of the State of California in this behalf, and allow your petitioner a writ of error, and order a transcript of the records, proceedings, and papers upon which said judgment was rendered, duly authenticated, to be sent to the Supreme Court of the United States, to the end that said judgment and record may be brought before said Supreme Cour of the Uited States, agreeable to the laws of the United States in that behalf enacted.

BURKE CORBET AND
CORBET & SELBY,
F. B. DANIELS,
G. S. FERNALD,
Attorneys for The Pullman Company,
Plaintiff and Appellant.

Dated: June 30, A. D. 1921.

108 [Endorsed:] Original. S. F. No. 9080. In the Supreme Court of the State of California. The Pullman Company, a Corporation, Plaintiff and Appellant, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant and Respondent. Petition for Writ of Error. Filed Jun- 30, 1921. B. Grant Taylor, Clerk, by M. Corbet & Selby, Attorneys at Law, 1201 First National Bank Building, San Francisco, California.

109 In the Supreme Court of the State of California.

S. F. No. 9080.

THE PULLMAN COMPANY, a Corporation, Plaintiff and Appellant,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant and Respondent.

Assignments of Error.

And now comes The Pullman Company, plaintiff and appellant, and avers that the judgment rendered and entered in the above-entitled cause by the Supreme Court of the State of California, on the fourth day of April, A. D. 1921, is erroneous and unjust to plaintiff and appellant, and that, in the record and proceedings therein, there is manifest error; and plaintiff and appellant files and presents the following assignments of error, upon which it will rely upon its prosecution of its petition for a writ of error in the above-entitled cause:

I.

The Supreme Court of the State of California erred in holding and deciding that the gross receipts of plaintiff and appellant, arising from interstate transportation, being a proportion based upon the proportion of the mileage within the state to the entire mileage over which said business was done, of earnings on all interstate business passing through, into, and out of said State of California, were subject to taxation by the State. The Court should have held that the taxation of said earnings, or any part thereof, by the State constituted an unlawful interference with and burden upon interstate commerce.

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II.

The Supreme Court of the State of California erred in holding and deciding that the assessment of a tax of Fifty Seven Thousand One Hundred and Fifty-nine and 08/100 Dollars ($57,159.08), made to the plaintiff and appellant by the State Board of Equalization of the State of California at some time between the first day of April, A. D. 1911, and the third Monday before the first Monday in July, A. D. 1911, was not an assessment and levy of a tax of three per cent upon the gross receipts of plaintiff and appellant for the year ending December 31, A. D. 1910, on all its business beginning and ending entirely within the State of California, and upon that proportion of the gross receipts from its business passing through, into, or out of said state that the mileage within said State bore to the total mileage over which said interstate business was done, and that said assessment and levy was not in violation of paragraph 3, Section 8 of Article I of the Constitution of the United States.

III.

The Supreme Court of the State of California erred in holding and deciding that the tax, amounting to Twenty-eight Thousand Nine Hundred and Ninety-five and 48/100 Dollars ($28,995.48), and the whole thereof, levied, charged, and collected from plaintiff and appellant, upon an assessment made by the State Board of Equalization of the State of California, upon the sum of Nine Hundred and Sixty-six Thousand Five Hundred Sixteen and 17/100 Dollars ($966,516.17), which was the gross receipts and earnings received by the plaintiff and appellant for the year ending December 31, 1910, from the business of plaintiff and appellant passing through, into, or out of the said State of California, and passing from one state to another state, was not a tax on the earnings
111 of the plaintiff and appellant in its business conducted from one state to another state or states, and was not and is not a tax on commerce among the several states, and a burden on such commerce, and was not and is not a tax on the income of property and business of the plaintiff and appellant situated without and beyond the State of California, and that the enforcement of said tax

against the plaintiff and appellant, and the payment thereof, required by the State Treasurer of said State, as provided by Section 14 of Article XIII of the Constitution of the State of California, and Chapter 335 of the Statutes of said State for the year 1911, approved April 1, 1911, did not, in fact, take from plaintiff and appellant its property, and deprive the plaintiff and appellant of its property, to-wit, the said sum of Twenty-eight Thousand Nine Hundred and Ninety-five and 48/100 Dollars ($28,995.48), for a tax levied under and by virtue of the laws of California, upon the income of the property and business of plaintiff and appellant situated without and beyond said State of California, and that the right of plaintiff and appellant to continue to do business in said State of California was not and is not made dependent on the payment of the said tax on or before a date fixed by said Statute of the said State of California.

The trial court in which said action was brought and tried so decided, and accordingly rendered judgment against plaintiff and appellant and in favor of the defendant and respondent; the Supreme Court of California, in affirming said judgment, made the same holding and decision.

IV.

The Supreme Court of the State of California erred in holding and deciding that the taxes demanded by the State and paid by plaintiff and appellant were taxes upon the property of plaintiff and appellant, subject to taxation in the State of California. The Court should have held that the taxes collected were taxes upon the
112 gross receipts of plaintiff and appellant, derived in part from interstate commerce.

V.

The Supreme Court of the State of California erred in holding and deciding that the action of the Legislature of California in January, 1911, in ascertaining and determining, or in purporting to ascertain and determine, that the property of plaintiff and appellant was of that value which, by levying thereon the rate of taxation levied upon other property and against other persons similarly situated, would result in a tax upon the value of said property employed in the business of plaintiff and appellant, equal in amount to three per cent of the gross receipts of plaintiff and appellant for the year ending December 31, 1910, within the State of California, including a mileage proportion of the gross receipts of plaintiff and appellant from interstate commerce, and that the action of the State Board of Equalization in considering and resorting to said gross receipts to ascertain and determine the tax that plaintiff and appellant should pay upon its property, amounted to and was an assessment for the purposes of taxation of the property of plaintiff and appellant subject to taxation in and by the State of California, or that either of

said acts, or that both of said acts combined, amounted to the making of an assessment of property for purposes of taxation.

The trial court in which said action was brought and tried so decided, and accordingly rendered judgment against plaintiff and appellant and in favor of defendant and respondent; the Supreme Court of California, in affirming said judgment, made the same holding and decision.

VI.

The Supreme Court of the State of California erred in holding that the tax of $57,159.08, which included 3 per cent upon $966,-
113 516.17 gross receipts and earnings from interstate commerce, was a tax upon the property of plaintiff and appellant company subject to taxation in the State of California.

VII.

The Supreme Court of the State of California erred in not holding that the Constitution and statutes of the State of California, being Section 14 of Article 13 of the Constitution and Chapter 335 of the Statutes for the year 1911, so far as the same apply or purport to apply to the gross receipts and earnings of plaintiff and appellant company arising from interstate transportation and the taxes claimed thereunder, are invalid for the reason that the same constitute an unlawful interference with and burden upon interstate commerce in violation of Sub-division 3, Section 8, Article I of the Constitution of the United States, and deprive the plaintiff and appellant of its property without due process of law in violation of the provisions of the Fifth Amendment to the Constitution of the United States.

VIII.

The Supreme Court of the State of California erred in not holding that the Constitution and statutes of the State of California, being Section 14 of Article 13 of the Constitution, and Chapter 335 of the Statutes for the year 1911, so far as the same apply or purport to apply to the gross receipts and earnings of plaintiff and appellant arising from interstate transportation, and the alleged taxes assessed thereunder are invalid and constitute a tax upon property of plaintiff and appellant outside of the State of California in violation of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

IX.

The Supreme Court of the State of California erred in refusing to reverse the judgment of the trial court and in failing to
114 give to plaintiff and appellant its rights under the Constitution of the United States, as claimed and set forth in the record in said action.

X.

The Supreme Court of the State of California erred in deciding that the validity of that portion of the Act (Statutes 1911, Chapter 335, pages 530, 548, Section 24), declaring a forfeiture of the right of a foreign corporation, plaintiff and appellant, to do business in the State of California, if taxes are not paid, is not involved in this action to recover taxes already paid.

Wherefore, plaintiff and appellant, The Pullman Company, prays that the judgment of the Supreme Court of the State of California be reversed for the errors aforesaid, and that said Supreme Court of the State of California be directed to enter judgment in this action in favor of plaintiff and appellant.

BURKE CORBET,
CORBET & SELBY,
F. B. DANIELS,
G. S. FERNALD,
Attorneys for The Pullman Company,
Plaintiff and Appellant.

Dated: June 30, A. D. 1921.

115 [Endorsed:] (Copy.) S. F. No. 9080. In the Supreme Court of the State of California. The Pullman Company, a corporation, plaintiff and appellant, vs. Friend W. Richardson, as treasurer of the State of California. Assignments of error. Filed Jun. 30, 1921. B. Grant Taylor, clerk Supreme Court. M. Corbet & Selby, attorneys at law, 1201 First National Bank Building, San Francisco, California.

116 In the Supreme Court of the State of California.

S. F. No. 9080.

THE PULLMAN COMPANY, a Corporation, Plaintiff and Appellant,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant and Respondent.

Allowance of Writ of Error.

Now comes The Pullman Company, a corporation, plaintiff and appellant above named, on this 30 day of June, A. D. 1921, and files and presents to this Court its petition praying for the allowance of a writ of error, intended to be urged by it, and praying further that a duly authenticated transcript of the records, proceedings, and papers upon which the judgment herein was rendered, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had in the premises as may be

just and proper; and, upon consideration of said petition, this Court, desiring to give petitioner an opportunity to test in the Supreme Court of the United States the questions therein presented;

F. M. A. It is ordered [by this court]* that a Writ of Error be allowed, as prayed; provided, however, that said The Pullman Company, plaintiff and appellant, give a bond according to law in the sum of Five Hundred Dollars ($500.00), for damages and costs, said bond not to operate as a supersedeas bond.

Witness my hand this 30 day of June, A. D. 1921.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

117 [Endorsed:] (Copy.) S. F. No. 9080. In the Supreme Court of the State of California. The Pullman Company, a Corporation, Plaintiff and Appellant, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant and Respondent. Allowance of writ of Error. Filed Jun. 30, 1921. B. Grant Taylor, Clerk Supreme Court. M. Corbet & Selby Attorneys at law, 1201 First National Bank Building, San Francisco, California.

118 In the Supreme Court of the United States.

(S. F. No. 9080.)

THE PULLMAN COMPANY, a Corporation, Plaintiff in Error,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant in Error.

Writ of Error.

UNITED STATES OF AMERICA, *ss.*:

The President of the United States of America to the Honorable the Justices of the Supreme Court of the State of California, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the Supreme Court of the State of California, before you, or some of you, being the highest Court of law or equity of the said state, in which a decision could be had in the said suit between The Pullman Company, Plaintiff and Appellant, and Friend W. Richardson, as Treasurer of the State of California, Defendant and Respondent, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute

[*Words enclosed in brackets erased in copy.]

of, or an authority exercised under, said state, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein any title, right privilege, or immunity was claimed under the Constitution, or any treaty or statute of, or commission held, or authority exercised under, the United
119 States, and the decision was against the title, right, privilege or immunity especially set up or claimed under such Constitution, treaty, statute, commission, or authority; a manifest error hath happened, to the great damage of the said plaintiff and appellant, The Pullman Company, a corporation, as by its complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this Writ, so that you have the same in the said Supreme Court at Washington within sixty days from the date hereof, that the records and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Joseph McKenna, Senior Associate Justice of the Supreme Court of the United States, the 30 day of June, in the year of our Lord One Thousand Nine Hundred and Twenty-one.

Done in the City and County of San Francisco, with the seal of the District Court of the United States for the Northern District of California attached.

[Seal of the U. S. District Court, Northern Dist. of California.]

WALTER B. MALING,
Clerk of the District Court of the United States,
Northern District of California.

Allowed this 30 day of June, 1921.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court
of the State of California.

120 [Endorsed:] Original. No. —. In the Supreme Court of the United States. (S. F. No. 9080.). The Pullman Company, a Corporation, Plaintiff in Error, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant in Error. Writ of Error. Filed Jun. 30, 1921, B. Grant Taylor, Clerk. By M. Corbet & Selby Attorneys at Law, 1201 First National Bank Building San Francisco, California.

121 In the Supreme Court of the United States.

(S. F. No. 9080.)

THE PULLMAN COMPANY, a Corporation, Plaintiff in Error.

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant in Error.

Bond on Writ of Error.

Know all men by these presents:

That we, The Pullman Company, a corporation organized under the laws of the State of Illinois, as principal, and Burke Corbet and John R. Selby, of the County of Santa Clara, State of California, as sureties, are held and firmly bound unto the above-named Friend W. Richardson, as Treasurer of the State of California, defendant in error, in the sum of Five Hundred Dollars ($500.00), to be paid to him, and for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 29 day of June, A. D. 1921.

Whereas, the above-named The Pullman Company, a corporation, plaintiff in error, seeks to prosecute its writ of error in the Supreme Court of the United States, to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of California;

Now, therefore, the condition of this obligation is such, that, if the above-named plaintiff in error shall prosecute its writ of error to effect, and answer all costs and damages that may be adjudged, if it shall fail to make good its plea, then this obligation to
122 be void, otherwise to remain in full force and effect.

THE PULLMAN COMPANY,
A CORPORATION,
By BURKE CORBET,
Its Attorney.
BURKE CORBET. [SEAL.]
JOHN R. SELBY. [SEAL.]

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Burke Corbet and John R. Selby, whose names are subscribed as sureties to the above bond, being severally and duly sworn, each for himself says: That he is a resident and freeholder of the State of California, and is worth more than the sum in said bond specified as the penalty thereof, over and above all his just debts and liabilities, in property not by law exempt from execution in this state.

BURKE CORBET.
JOHN R. SELBY.

Subscribed and sworn to before me, this 29 day of June, A. D. 1921.

H. B. DENSON,
Notary Public in and for the City and County of San Francisco, State of California.

This Bond approved this 30 day of June, A. D. 1921.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

123 [Endorsed:] (Copy.) S. F. No. 9080.) In the Supreme Court of the United States. No. —. The Pullman Company, a Corporation, Plaintiff in Error, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant in Error. Bond on Writ of Error. Filed Jun- 30, 1921. B. Grant Taylor, Clerk Supreme Court. M. Corbet & Selby, Attorneys at Law, 1201 First National Bank Building, San Francisco, California.

124 In the Supreme Court of the United States.

(S. F. No. 9080.)

THE PULLMAN COMPANY, a Corporation, Plaintiff in Error,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant in Error.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Friend W. Richardson, as Treasurer of the State of California, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States, at Washington, D. C., within sixty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of California, wherein The Pullman Company, a corporation, is the Plaintiff in Error, and Friend W. Richardson, as Treasurer of the State of California, is the Defendant in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiff in Error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of California, this 30 day of June, A. D. 1921.

[Seal of the Supreme Court of California.]

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

Attest:
B. GRANT TAYLOR,
Clerk of the Supreme Court of the State of California.

125 City and County of San Francisco, State of California, July 1, 1921.

We, the undersigned, attorneys of record for the defendant in error in the above-entitled cause, hereby acknowledge due service of the attached citation, and enter an appearance for said defendant in error in the Supreme Court of the United States.

U. S. WEBB,
Attorney General for the State of California, Humboldt Bank Building, San Francisco, California;
RAYMOND BENJAMIN,
Chronicle Building, San Francisco, California, Attorneys for Friend W. Richardson, as Treasurer of the State of California, Defendant in Error.

126 [Endorsed:] Original. No. —. In the Supreme Court of the United States. (S. F. No. 9080.) The Pullman Company, a Corporation, Plaintiff in Error, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant in Error. Citation. Filed Jun. 30, 1921. B. Grant Taylor, Clerk Supreme Court. Corbet & Selby, Attorneys at Law, 1201 First National Bank Building, San Francisco, California.

127 In the Supreme Court of the United States.

No. —. (S. F. No. 9080.)

THE PULLMAN COMPANY, a Corporation, Plaintiff in Error,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant in Error.

Præcipe.

To the Clerk of the Supreme Court of the State of California:

You are hereby requested that, in transmitting a true copy of the record of the Supreme Court of the State of California to the Supreme

Court of the United States, pursuant to the Writ of Error heretofore granted, issued, and filed, as required by law, in the above-entitled action, you make up and incorporate into the transcript of the record on such Writ of Error the following portions of the record in said case in your office, namely:

1. Transcript on appeal to the Supreme Court of the State of California;

2. Opinion of the Supreme Court of the State of California, and the Judgment entered by the Clerk of said Court thereupon;

3. Petition for Writ of Error;

4. Assignments of Error and Prayer for Reversal;

5. Order Allowing Writ of Error;

6. Bond and approval thereof;

7. Writ of Error;

8. Citation with admissions of service thereupon;

9. Stipulation of the parties as to elimination of the Opinion of the Supreme Court of the State of California from the transcript of the record, and consent to argument and consideration of this and other related cases in the Supreme Court of the United States at one and the same time;

128 10. This Præcipe, admission of service, and stipulation;

together with all endorsements of the filing thereof, as to each of said papers, showing the time of the filing of each of them in your office.

Dated: July 18, A. D. 1921.

F. B. DANIELS,
G. S. FERNALD,
BURKE CORBET,
JOHN R. SELBY,
Attorneys for Plaintiff in Error.

We do hereby admit service of the foregoing Request upon us at the City and County of San Francisco, State of California, this 19th day of July, A. D. 1921.

U. S. WEBB,
Attorney General of the State of California;
RAYMOND BENJAMIN,
Attorneys for the Above-named Defendant in Error.

We hereby stipulate and agree that the portions of the record in the above-entitled action, set forth in the foregoing Request of the attorneys for the Plaintiff in Error, are sufficient, and are all of the record of said action deemed necessary by us to be incorporated in the record on the Writ of Error in said action, and when so prepared by

the Clerk shall constitute the transcript of the record on the Writ of Error aforesaid.

U. S. WEBB,
Attorney General of the State of California;
RAYMOND BENJAMIN,
Attorneys for Defendant in Error.

Dated: July 19, A. D. 1921.

129 [Endorsed:] No. —. In the Supreme Court of the United States. (S. F. No. 9080.) The Pullman Company, a Corporation, Plaintiff in Error, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant in Error. Præcipe. Filed Jun. 30, 1921. B. Grant Taylor, Clerk, by —— ——. Corbet & Selby, Attorneys at Law, 1201 First National Bank Building, San Francisco, California.

130 In the Supreme Court of the United States.

No. —. (S. F. No. 9080.)

THE PULLMAN COMPANY, a Corporation, Plaintiff in Error,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant in Error.

Stipulation.

Whereas, the following mentioned seven cases, now and heretofore pending in the Supreme Court of the State of California, viz., six thereof being entitled "The Pullman Company, a Corporation, Plaintiff and Appellant, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant and Respondent", and being numbered in said State Court as S. F. Nos. 9080, 9081, 9082, 9083, 9084, and 9085, respectively, and one of said cases being entitled "Walker D. Hines, as Director General of Railroads, and The Pullman Company, a Corporation, Plaintiffs and Appellants, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant and Respondent", and being numbered therein S. F. No. 9183, were all heard, considered, and determined in the said State Court at one and the same time, and the said State Court did render its decision and opinion therein, in all of said cases, at one and the same time, which said decisions and opinions, so rendered, were identical in each of said cases; and,

Whereas, a Writ of Error to the said Supreme Court of the State of California, from the Supreme Court of the United States, has been allowed, issued, filed, and served, and made returnable to the said Supreme Court of the United States in each of said cases, ac-

cording to law and the course of procedure and practice of
131 the said Supreme Court of the United States; and,

Whereas, all of said parties in all of said cases deem it advisable to abridge the length of the transcript to be returned with said Writs of Error in each of said cases, consistent with the course of procedure and practice of the said Supreme Court of the United States, and that the said opinion of the said State Court in but one of said cases be taken to the said Supreme Court of the United States, and that all of said cases be considered, heard, and determined upon said Writs of Error in the said Supreme Court of the United States at one and the same time;

Therefore, it is hereby stipulated and agreed, by and between the said respective plaintiffs in error and the said respective defendants in error, in each and all of said cases, that, with the return of the transcripts upon the return of said Writs of Error in each of said cases to the said Supreme Court of the United States, there be incorporated in said case designated as S. F. No. 9080 a copy of the opinion and decision of the said Supreme Court of the State of California, hereinbefore referred to, and that a copy of the said opinion and decision in each of the other of said several cases be and the same is hereby dispensed with; and

Be it further stipulated and agreed that each and all of said several cases shall be heard, considered, and determined in the Supreme Court of the United States at one and the same time, said opinion and decision in said case designated as S. F. No. 9080 being considered as a part of the transcript of the record in this case;

Be it further stipulated that this stipulation be incorporated in and become a part of the transcript of the record upon the return of each of said several writs of error in each of said cases,
132 upon the return of each of said transcripts of the said record of each of said cases to the Supreme Court of the United States.

Dated this 18 day of July A. D. 1921.

F. B. DANIELS,
BURKE CORBET,
G. S. FERNALD,
JOHN R. SELBY,
Attorneys for the Plaintiff in Error.
U. S. WEBB,
Attorney General for the State of California,
RAYMOND BENJAMIN,
Attorneys for the Defendant in Error.

133 S. F. 9080.

THE PULLMAN COMPANY, a Corp., Plaintiff, Appellant,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant, Respondent.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the proceeding and annexed is a true and correct copy of transcript on appeal in the above entitled case; copy of opinion; original petition for writ of error; copy of assignment of errors; allowance of writ of error; original writ of error; copy of bond; original citation; præcipe; and stipulation as to record on writ of error, as shown by the records of my office.

Witness my hand and the Seal of the Court, this 28th day of July, A. D. 1921.

[Seal of the Supreme Court of California.]

B. GRANT TAYLOR,
Clerk,

By I. ERB,
Deputy Clerk.

134 [Endorsed:] (Copy.) (S. F. No. 9080.) In the Supreme Court of the United States. No. —. The Pullman Company, a Corporation, Plaintiff in Error, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant in Error. Stipulation. Filed Jun. 30, 1921. B. Grant Taylor, Clerk, by M. Corbet & Selby, Attorneys at Law, 1201 First National Bank Building, San Francisco, California.

Endorsed on cover: File No. 28,419. California Supreme Court. Term No. 464. The Pullman Company, plaintiff in error, vs. Friend W. Richardson, as Treasurer of the State of California. Filed August 13th, 1921. File No. 28,419.